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PLEASANTRIES
ABOUT
COURTS AND LAWYERS
OF THE
STATE OF NEW YORK.

BY
CHARLES EDWARDS,
OF THE NEW YORK BAR;
AUTHOR OF "THE HISTORY AND POETRY OF FINGER RINGS,"
ETC., ETC., ETC.

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By CHARLES EDWARDS,

In the Clerk's Office of the District Court of the United States for the Southern District
of New York.

I

DEDICATE

THIS BOOK

TO

PIERREPONT EDWARDS, ESQUIRE,

HER BRITANNIC MAJESTY'S VICE-CONSUL

AT THE PORT OF NEW YORK,

THROUGH MY LOVE FOR HIM

AS A SON

AND FROM MY PRIDE IN HIM

AS A MAN.

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PLEASANTRIES

ABOUT

COURTS AND LAWYERS.

CHAPTER I.

PRELIMINARY.—CRIER.—OPENING OF COURT.—ADMISSION TO THE BAR.—
MAKING CITIZENS.

IN getting together a work like the present, care should be taken not to wound. We ought to skim as a swallow, so that, if our wing ruffle the water, it should only raise bubbles light and bright and evanescent as those which jewel champagne.

Such a work must not have the heaviness of a biography. If it had, we should have applied to us a retort which fell from a judge of our Supreme Court. Counsel had been elaborate on a motion; and ended by saying he feared he had been tediously clear. His honor observed, he did not know how far that might be, but he was sure the advocate had been clearly tedious.

Nor could a publication like the one now opening be written with set chapter and section. We must write *con amore*, as though our professional brothers were joining us in a pleasant mental game of battle-dore and shuttle-cock, and yet requiring sufficient silence and attention.

We, then, begin by borrowing the words of old Jacob Hays, so long crier to the New York Sessions, invariably used by him

at the opening of court: "All those that have got seats will sit down and be seated." And with this may be coupled the way in which the late Recorder Scott, of the same court, used to exclaim to the same crier: "Mr. Crier, you really must make silence in the court. We have got many prisoners yet to try. We have already convicted six, without having heard a word of testimony against them."

By the way, as to Old Hays. One day, while the Sessions was in operation, the room became unusually warm. He was very apt, towards the afternoon, to drop away in a doze. While the recorder was charging a jury, the old man snored quite audibly. An officer immediately whispered in his ear: "Uncle Jacob, some one is snoring and disturbing the court." Up jumped Hays, and with his stentorian lungs, cried out: "Silence! There must be no snoring in court!" And turning to Mr. Recorder, he said, "You can go on now without interruption."

A story is told of him that, being awakened one day by a peal of thunder, he cried out, "*Silence!*"

Although it may not, ought not to happen more than once in a century that a question should arise, "under which king, Bezonian?" in other words, who is the right judge to preside, yet a remarkable—may we not say, sad!—circumstance for the dignity of the judiciary occurred at a sitting of the Supreme Court in New York during the year 1855. Judge Henry Pierrepont Edwards, whose term of office would have expired on the thirty-first of December, died, and the Governor immediately appointed Mr. Edward P. Cowles to fill the vacancy. On the twenty-fifth of August, the Secretary of State gave notice that, at the ensuing election, a justice was to be elected in the place of Judge Cowles, whose term of office would expire on the thirty-first of December. On the twenty-third of October (1855), Judge Robert Morris died, thus creating a vacancy required by the constitution to be filled at the next election. Either from want of time or some other reason, no official notice was given of such an election. Each of the several political parties—for the time had come when judges were to spring from

ballot-boxes—nominated a candidate and no less than four gentlemen received votes for this office ; among whom were Mr. Charles A. Peabody and Mr. Henry E. Davies. On the third of December, Judge Cowles resigned the office to which he had been appointed on the death of Judge Edwards ; and Mr. Peabody was appointed to fill it. He accepted and acted for twenty-seven days, when his term expired ; and Mr. James R. Whiting, who had been duly elected to succeed to this office, entered upon its duties. On the same third of December, the Governor, treating the votes in the Fall for a judge in the place of Judge Morris as void, nominated Judge Cowles for the unexpired term of Judge Morris ; and on the sixth of December Judge Cowles entered upon it. The attorney-general, thereupon, filed a bill, in the nature of an information *quo warranto* against Judge Cowles ; and to this proceeding Mr. Davies, who had received at the Fall election a plurality of votes for candidates nominated to fill Judge Morris's vacancy, was made a party plaintiff. Judge Cowles demurred to the bill ; and the Supreme Court, composed of judges presiding in New York, sustained the demurrer and decided the election invalid. The case was removed to the Court of Appeals, and this decision was there overruled, and an order made, "that Henry E. Davies, named in this complaint, be and he is hereby declared to be entitled to the said office by virtue of the election in said complaint mentioned." (The People, on the relation of Davies v. Cowles, 3 Kern. R., 350.)

On the fourth of February, 1856, but before Mr. Davies had taken any action under the decision of the Court of Appeals, two of the judges of the Supreme Court (Roosevelt and Clerke) addressed him a letter, stating they had examined the claims of the "contestants" to the vacant seat ; in their opinion the votes given for him at the election in the Fall were irregular and void, and they considered Judge Peabody (another of the candidates not a party to the information) duly elected. Judge Davies replied to this letter. On the fourteenth of February, a court, consisting of three judges, among them Judge Peabody, came in at the usual hour ; and

almost at the instant Judge Davies entered, handed the clerk a copy of the opinion of the Court of Appeals, directing him to file it, asked an officer for a chair and took his seat upon the bench. An hour later, the other three judges directed the clerk to make the following entry: "Ordered that the court does not recognize any persons as judges present at this general term except Judges Roosevelt, Clerke and Peabody; and that the clerk and other officers be directed to govern themselves accordingly."

The next morning, punctual to the moment, Judge Davies again appeared and took his seat of the previous day. A large crowd, induced by curiosity, had filled the court-room. The other judges entered and an officer handed Judge Peabody a chair, without either party speaking a word or in any way recognizing the presence of the other. The court was opened by the proper officer, and the presiding justice (Roosevelt) immediately ordered its adjournment for a week. In a different apartment another judge was holding sittings in Chambers, and upon the adjournment in general term, Judge Davies walked into this room, was received by him with cordiality and invited to hold court. He immediately assented, took his seat, heard motions and granted orders in the exercise of his judicial discretion during the rest of the morning. This continued for some days—Judge Davies holding court at Chambers, assuming to act as judge, issuing orders in cases brought before him, decreeing divorces and directing one or more arrests.

On the twenty-sixth of February two matters occurred which did not disentangle the knot. Judge Clerke, one of the signers of the letter, vacated an order of arrest granted by Judge Davies, on the ground that he was not *de facto* a judge; and Judge Peabody presided at the examination of candidates for admission to the bar, which is required to be held in open court. Meanwhile both judges still continued to be present at the general term; the only change in the aspect of the bench arising from the fact that the seats of the two contestants, to borrow the judicial phrase, were placed at each extremity of the bench, instead of side by side, as on the first memorable day. It was only at these sessions of the court at general term that the other members of the bench, the bar and

both contestants came into direct contact ; and their meetings sometimes gave rise to colloquies more animated than dignified, of which the following may serve as a specimen.

"Of how many judges does this general term consist—of three or four, sir?" said one of the counsel about to open the argument of a case, addressing the presiding judge, and looking at the four incumbents of the judicial bench.

"Of three judges only," was the reply.

"Very well ; then I'll address my argument to the three judges whom I think constitute the court," was the instant rejoinder.

But now a new arbiter appears. Judge Strong, of the second judicial district, who was for some cause holding court in New York, invites Judge Davies to take his place in that district ; and thus, on the tenth of March, at Brooklyn, Judge Davies, for the first time, without interruption and with no one to question his authority, took judicial elbow-room. For this day he was, at least, every inch a judge.

The contest, which had lasted more than a month, now drew to a close. On the seventeenth of March, Mr. Peabody wrote to the two judges who signed the letter before mentioned and declined acting any longer as judge—proposing, as Mr. Davies would not consent to put himself again in the attitude of plaintiff and permit him to hold the seat till the controversy was decided and as Judge Cowles would not or could not by an understanding with Judge Davies take advantage of the opportunity allowed him by the Court of Appeals to file an answer to the original suit, to become himself the prosecutor in a suit against Mr. Davies to test his right to the seat of which he had held for a month a *quasi* occupation, and which, by Judge Peabody's withdrawal he would, with the consent of all parties, occupy as a judge *de facto*. His letter treated with considerable severity the conduct of all the parties to the dispute, both principals and accessories, and commented upon the course of Judge Cowles in such a way as to call forth from him a very sharp reply and handling, without gloves, to borrow a phrase from "the noble art," the other combatants.

This was the last act of the drama.

Supposing there is a judge duly appointed, recognized and in judicial harness, with court-portals open, and lawyers, parties, jurors and witnesses convened, yet the most important personage may not have arrived. "Where is County Guy?"

Now, some judges, who are not patterns of punctuality, show an inclination to punish delinquent jurors. This, however, can be reconciled through the following story.

Judge John Sloss Hobart of the Supreme Court of the State of New York was tenacious of the attendance of jurymen on the call of the panel at ten o'clock in the morning; and he would invariably fine a non-attending one. He had done so in a particular instance. A day or two afterwards, the bar and jury had to wait some time before the judge came. On his taking his seat, this delinquent jurymen made free to address his honor and express a hope that the fine imposed on him would be withdrawn, for the present showed how even a correct presiding officer might be behind time.

"I desire the jury, and this jurymen in particular, to understand," exclaimed Judge Hobart, emphatically, "that it is not ten o'clock until the judge reaches the bench."

The tablet placed in one of the court-rooms to the memory of Judge Hobart, written by Mr. Egbert Benson, Attorney-General, has been criticized by members of the bar, as they sit in court and observe it. How far, justly, our readers can judge for themselves.

JOHN SLOSS HOBART

*His birth at Fairfield in Connecticut,
His Father the Pastor of the Church there.
Judge of the Supreme Court of this State
from 1777 to 1798, when he attained the Age
of sixty years!—afterwards in the same
year, appointed Judge of the District Court
of the U. S. within this District, and continued
in the Trust to his Death 1805.*

As a Man—firm

As a Citizen—zealous

As a Judge—distinguishing

As a Christian—sincere

*This Tablet is placed to his memory
by one, to whom*

'As a friend—as close as a Brother.'

It will have been seen from the *dictum* of John Sloss Hobart, how even time stands still for a judge. And that there may be a great difference between a private individual and a justice is illustrated in this : At Cooperstown, on the organization of Otsego County (1791), James Alpin, an honest and worthy but rather vain man, was made one of the justices ; and on his return home, he remarked to his wife :

“My dear, last night you slept with James Alpin ; to-night, with James Alpin, Esquire.”

Isn't this “justice of peace and *coram*—ay, cousin Slender, and *cust-alorum*—ay, and *ratalorum* too ?”

A distinction, however, is sometimes taken by those connected with the profession, as to judges, by grading them. Thus H——, a reckless inebriate of a lawyer, lost a cause before a judge of Richmond County. As the latter, on the adjournment of the court, was going down the stairs, H—— followed, and, using his foot, made his honor find anchorage upon the pavement below. The old judge gathered himself together, picking up his spectacles on one side and his false teeth on the other ; then, he had the desperado brought into the court-room ; opened court formally, and committed H—— to prison for contempt. Subsequently came a writ of *habeas corpus*, returnable before the general term of the old Supreme Court at Albany ; and under it H—— was released, on the technical ground that, as there had been an adjournment before the misconduct, therefore there was no contempt of court. Many years afterwards, H—— was sitting before a stove in a tavern, and was asked :

“How came you to attack a circuit judge for a decision adverse to you ?”

“It's a lie,” exclaimed H—— in a half-drunken, maudlin manner, “he was only a county judge.”

Before the business of empannelling and trying commences, a court may have to get rid of the matter of admission of students ; and, aid in the making of citizens.

One of the examiners appointed at a term in New York to scrutinize a class of students for admission to the bar, called out a

name from the list. A tall young gentleman arose from a back seat. Mr. Examiner was working the subject of domestic relations, and put the following question :

"If a wife, knowing the infidelity of her husband, subsequently voluntarily cohabits with him, can she bring an action for divorce ?"

The young man paused for a moment, and then asked, "By infidelity, sir, do I understand you to mean a disbelief in the existence of the Supreme Being ?"

This interesting youth really passed muster, and received a diploma.

Mr. Brady was an examiner of students on their applications for admission.

"Suppose," said he, "a man sold a horse, warranted sound and free from vice, and directly after it was taken home it showed itself both vicious and unsound, what form of action would you bring against the seller ?"

"I would sue him," answered a student, "for breach of promise."

At a meeting of the New York Bar, convened in consequence of the death of Mr. Nicholas Hill, Mr. Charles O'Connor related the following incident of the deceased. When in the full tide of his professional success, during one of the spring terms of the Supreme Court held in New York, Mr. Hill was placed upon the committee to examine applicants for admission. Among the candidates were two young gentlemen who, in the stern judgment of Mr. Hill's associates, failed to exhibit the requisite requirements. The decision was undeniably just, even Nicholas Hill could not argue against its justice ; but he felt and he said that it was cruel. The young men were strangers to him, but they were young men struggling with the trials of life and this was enough for Nicholas Hill. He was at once transformed from the austere champion of justice, as he was known at the bar, to the suppliant for a gentler result. To his manly intellect there seemed conjoined a woman's heart. He besought his associates to a kindlier conclusion, as a mother would crave indulgence to the failings of a

beloved son. (Memoir of Nicholas Hill, prepared and published by a Committee of the Bar of the City of New York, 1859, p. 16.)

Even before the Code of Practice went into operation, it sometimes required little knowledge of law to get admitted to the bar. It was not uncommon with some of the courts to refer an applicant for admission to a member, whose certificate was allowed to be final.

The author was assured—this is some years ago—by a lawyer that, on his taking an order, as to himself, to a counsellor, the latter only asked him whether he could keep a secret, taking for granted he knew sufficient of practice and rules, and gave him a certificate of competency.

And there was (we do not positively say is) a good-humored, convivial Irishman in New York named M——, who had kept a tavern. He got admitted to the bar through a somewhat similar certificate. His practice was mainly confined to the assistant justices' courts. He seemed to have discovered new rights of *tinants*, and showed great alacrity in carrying cases to the *Shupariar* Court. The old rule books can show amusing entries in his handwriting, wherein it is "*ordhered* that the justice return the *sasherari*," &c. Once, in examining a witness, who hesitated, either from nervousness or reluctance, our luminary gave a most studiously side-long, searching look, and asked—

"Do you mane to abscond the question?"

During a process of naturalizing foreigners before Judge Daly, of the New York Common Pleas, an Irishman (some one has described an Irishman as a machine for converting potatoes into human nature), named Barney Malone, was sworn as the witness to Michael Flanagan's qualifications for citizenship, and the following dialogue occurred:

Judge.—"How long have you been acquainted with Michael Flanagan?"

Witness.—"More nor five years, your honor, and I wish it had been longer, for a betther man never knew his mother since—" (he was here stopped).

Judge.—“Is he a man of good moral character?”

Witness.—“Now is it Mick’s character your honor is spaking of! Faith, sir, he has a beautiful character, that same Mick has, and your honor will be proud of his acquaintance from this day.”

A man came up to be naturalized before a Supreme Court judge. He was an Irishman, and brought his witness along to testify, as required by law, that he was a man of good moral character. The judge asked the witness if the applicant was a respectable man.

“Indeed he is, your honor, very respectable. He never had a lawsuit in his life.”

Another son of the Emerald Isle came forward, a burly young man, who brought his father as his witness. The judge asked the father if his son was a good man.

“A good man!” was the response. “The divil a better; there isn’t a man in the ward can whip him, though many a one has tried.”*

In another case before Judge Daly, one of Patrick Mahony’s friendly witnesses was asked how long he had known him.

“And was it how long he had known him? for better nor fifteen years.”

“And was he a man of good moral character?”

“Niver a better.”

“Has he been out of the United States during the last five years?”

* Judge Edmonds, in giving the author the above anecdotes, went on: ‘These anecdotes of the Irish remind me of an Irish woman who went to an apothecary and asked him what was good ‘for a man.’

“‘What’s the matter with the man?’ asked the apothecary.

“‘Is it castor-oil or salts that would be best for him?’ persisted the woman.

“‘How can I tell,’ exclaimed the apothecary, ‘unless I know what’s the matter with your man?’

“‘The matter with him, is it?’ responded the woman; ‘the divil a thing is the matter with him, but having a leisure day he thought he’d better be taking something.’”

Our witness pondered, and then, with all soberness of manner, answered—

“Once’t.”

“And when?”

“About three years ago and it was.”

“Where did he then go out of the United States?”

“To Bull Run, your honor.”

At a Circuit Court at Canandaigua, Judge Hiram Gray, of Elmira, presided, he having exchanged with the regular judge. An Irishman presented himself for naturalization.

Judge.—“How long, Patrick, have you been in this country?”

“Six years, your honor.”

“Where did you land?”

“In New York, sir.”

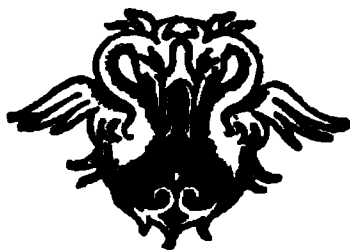
“Have you ever been out of the United States since you landed, six years ago?”

“Niver but once, y’r honor.”

“And where did you go then?”

“To *Elmira*, y’r honor.”

Pat got his papers and returned to foreign lands.



CHAPTER II.

SPIRIT OF LITIGATION AND PECULIAR SUITS, PROCEEDINGS AND
PLEADINGS.

It does not require any one to be long in a court before he discovers how many things brought there ought to have been settled elsewhere or never laid hold of anywhere. Indeed, moral scrutiny must result in an admission that men ought to govern themselves and forbear and bring only a few very grave and very great wrongs into a court of justice. Instead of this, it is made a medium for envy, hatred, malice and all uncharitableness ; while the offices of its clerks have piles of papers, thick as autumnal leaves, containing charges and countercharges, crimination and recrimination. We know not whether others have observed as we have, but our examination of physiognomy and movements in a court convinces us that the good and the amiable, the forbearing and the charitable are not there. You see men all eyes, while Justice herself does right blindfolded.

Doctor Johnson compared plaintiff and defendant to two men ducking their heads in a bucket and daring each other to remain longest under water.

Ducking and daring, accompanied by persistence, are particularly observable in small matters. Indeed, it may be a question—taking the world and all its pursuits together—whether trifles do not employ and fret and disgrace men more than sore ills and great evils. Even manly Hotspur would cavil on the ninth part of a hair.

And then, again, some men are never satisfied unless they are engaged in litigation. One of this kind had purchased a small summer residence in the vicinity of New York. The stable of his

neighbor was built close to the line which divided the two places ; and one of its window-shutters opened over the newly-purchased premises of our litigious gentleman. Being advised by his lawyer that he had a right to do so, he at once demanded this window-shutter should not open outwards. The neighbor was a simple-minded and law-detesting German, and readily consented to change the swing of the shutter. The proximity of the stable, however, was a constant source of irritation. Shortly after obtaining the concession referred to, our excitable friend came into the office of his professional adviser in a state of agitation—

“ I have got him certain, now ! ”

“ Got whom ? ” asked our lawyer.

“ Why, that German neighbor of mine. ”

“ How ? ”

“ This morning I was standing upon my piazza and I saw a goat looking out of the stable-window ; and what do you think, sir ! its head was seven inches and a half over the line ! I can testify to this, and so can my gardener whom I called to witness it. ”

“ Well, ” responded the lawyer, “ and what of that ? ”

“ What of that ! ” almost screamed the client. “ Do you think I am going to stand a circumstance like this ? It is a trespass, sir ; and I want a suit brought at once ! ”

“ Do you, ” remarked the legal gentleman, “ really mean, sir, to have a suit commenced for such a trifling matter ? ”

“ Do you call this trifling ? Look here, Mr. ——. You consider me, I believe, a pretty good client. My law business is of value in the course of a year, is it not ? ”

“ Certainly. ”

“ Well then, sir, I mean to have this suit brought. No man can be safe in the enjoyment of his property if he tamely submits to such an outrage. Now, sir, you may bring this suit or not. If you decline, I can find another lawyer who will act for me ; and remember, I want no Justice's Court—I will have the trial in the Supreme Court of the State of New York—I'll run the risk of costs. ”

“ As you seem so determined, I will bring the action ; but remember, you must get some other counsel to try it. ”

The suit was brought, and the owner of the goat and its neck, not knowing but what the summons served on him involved almost his own neck, employed competent counsel, who happened to be an intimate friend of the plaintiff's lawyer. After a time, and while the client of the latter was revelling in more important matters of litigation, the defendant's counsel managed to get a discontinuance, without costs.

This reminds one of the action of trespass brought in England against a man for nailing to his own wall a board which overhung his neighbor's field; and wherein Lord Ellenborough, in his somewhat grandiloquent manner, thus expressed himself: "I do not think it is trespass to interfere with the column of air superincumbent on the close of another. I once had occasion to rule on the circuit that a man who, from the outside of a field, discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. A very learned judge, who went the circuit with me, having at first doubted the decision, afterwards approved of it, and I believe it met with general concurrence of those to whom it was mentioned. But I am by no means prepared to say that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*." Nay, if this board commits a trespass by overhanging the plaintiff's field, the consequence is that an aeronaut is liable to an action of trespass at the suit of the occupier of every house and inch of ground over which his balloon passes in the course of his voyage. Whether the action lies or not, cannot depend upon the length of time for which the superincumbent air is invaded. If any damage arises from the overhanging substance, the remedy is by an action on the case." (Pickering v. Rudd, 4 Camp. R., 220.)

A restless creature in New York, who seemed to batten on lawsuits, was anxious to file a bill in Chancery against his partner, and was constantly at a solicitor with this view, until the latter got tired of his visits, especially as he had seen nothing like a retainer fee. He gave the client to understand

that, while he in no way advised a suit, yet a fee and a direct order to file a bill must be ready whenever he came again.

"Very well," said the law-seeking votary, "I'll go down to the store and intimidate the obstinate mule, and you shall file a bill even if that don't make him commit himself."

Twenty minutes had hardly transpired before the client again entered the attorney's office; but now he had two black eyes, and exclaimed—

"File your bill, Mr. G——, file your bill. I could not intimidate him, confound him! but I'll fix him yet."

The bill was filed; but this eager plaintiff was himself subsequently fixed, by losing his suit.

In a village not far from New York was a man known as Broken Jones. He had dissipated a fortune in law-suits; became crazy; but still haunted courts and the offices of lawyers. He was very troublesome to judges and attorneys, from whom he was constantly asking for opinions, although he had not a cent to pay for them. One morning he entered the office of Mr. D—— in an excited state and wanted an opinion on some foregone conclusion. The latter was busy at the time.

"I came," said Broken Jones, "to get your opinion in writing on this case, and will have it before I leave the room, if I sit here till the day of judgment."

D—— thought at first of forcible ejectment, but the glaring eye and stalwart form of Broken Jones might lead to the former's getting broken bones. At length our brother's dinner-bell rang. He put on his coat and hat and taking Jones gently by the arm, said—

"Come, and dine with me."

"No!" said the latter fiercely, "I'll not dine again until after I've got what I came for."

Our lawyer, like Wordsworth's Betty Foy, was in a sad quandary. In despair he determined to let his dinner cool and give the opinion.

"Well, well, Jones, you shall have it."

So, getting together pen, ink and paper, he seated himself at his

table, while Broken Jones, creeping on tiptoe across the room, stood peeping over his shoulder. The learned counsellor commenced : "My oppinion in the case ——"

"Bah!" exclaimed the erratic creature, suddenly seizing his hat and turning on his heel, "I wouldn't give a —— for your opinion with two ps!"

In a certain part of our State, two Dutchmen, who built and used, in common, a small bridge over a little stream which ran through their farms, had a dispute concerning certain repairs which it required. One of them declined to bear any portion of the expense necessary to the purchase of two or three planks. The aggrieved party went to a neighboring attorney and placing ten dollars, in two notes of five dollars, into his hand, said—

"I'll give you all dish monies if you'll make Hans do justice mit de pridge."

"How much will it cost to repair this bridge?" asked the attorney.

"Well, den, not more ash five tollars."

"Very well," said the legal gentleman, pocketing one of the notes and giving the Dutchman the other, "take this and go and get the bridge repaired ; it's the best course you can take."

"Yaas," responded the client slowly, "y-a-a-s ; dat ish more better as to quarrel mit Hans."

But as he went home, he shook his head frequently, as if unable, after all, quite clearly to see how he had gained any thing by going to the lawyer.

On another occasion, proceedings were neutralized between the same parties by the same attorney in a case of dog-shooting.

"Did you shoot the complainant's dog?" asked the counsellor of one of them.

"Yaas, I shot him ; but let him brove it!"

"Well," addressing the other, "what was your dog worth?"

"Well, den, he wasn't wort' not'ing ; but I mean to make him pay the wort' of him for shootin' him."

A court was held in a village in the eastern portion of New

York State—in a dirty grocery. The justice, in a fustian jacket and blue-checked cravat, sat behind an unpainted table, with a pocket-bible and two law-books before him. The jury were on a bench without any back, and freely conversed with parties and spectators during the trial. A boy, apparently eight or ten years old, was arraigned on a charge of larceny, and the witnesses were sworn in the manner following, that is to say :

“ You do solemnly swear in the presence of Almighty God, that in this traverse between the people of the State of New York and Abraham De Grod, defendant, so help you God.”

The testimony confirmed the charge in the indictment, that the said juvenile Abraham did feloniously steal, take, carry away and convert to his own use the following property, of the goods and chattels of one P. W., grocer, *videlicet*, one clam and three crackers. The jury found the little wretch guilty in manner and form as in the indictment was alleged ; and justice, in a fustian jacket and blue-checked cravat, sentenced him to a fine of four dollars and the costs of prosecution.

A Knickerbocker Dutchman present, with an introductory “ Mein Gott !” asked “ whether that vas vat dey call joostice !”

George Wilson, of the New York Bar, son of Professor Wilson of Columbia College, was a man of genius, but eccentric and of unequal efforts. At times he would be eloquent ; but his powers were often expended in trivial matters. A marketman retained him to recover a missing peach-basket ; and Wilson brought replevin. The action was defended ; and Wilson went to the jury in a strain of forensic eloquence which charmed the frequenters of the court and carried the jury with him in a verdict. The value of the peach-basket was twenty-five cents.

Going out of the State of New York, we see in a late newspaper that an action has been brought at Harrisburg for an alleged balance of five cents.

A slender and delicately formed woman, attended by her little boy, about six years of age, entered a lawyer's office in Albany, during his absence, but he had left an intelligent student in charge of his practice. The child's head was extensively covered with a

long-napped fur hat, which rested on his ears and had evidently been purchased with a view to his future growth. His coat of "pressed cloth" had a very long skirt and had once composed a part of a gown to his economical mother. The widow and orphan composed the family. They had come some twenty-five miles to market, in a wagon drawn by one horse, and had brought with them all the products of a summer's industry which they could spare from their scanty harvest. The sum-total, after the sale of stocking-yarn, woollen mittens, socks, chickens, etc., had been calculated on to a cent before leaving home, so that any fall in the market or loss by misfortune or knavery was calculated to impair her finances and destroy her hopes. She told this story. Soon after taking her stand in the street, in the morning, among the inquiries made of her as to the price of her commodities, was one by deacon S——, a very pious and reputable member of one of the Albany churches. He wished to know what she wanted for a pair of chickens. The woman answered, two shillings. To this the deacon demurred, but offered eighteen pence. The widow responded that she had but little to bring to market and had calculated on receiving a certain sum of money for it; she knew her chickens were worth the price charged and she could not sell them for less than two shillings a pair. Hereupon the deacon left; but soon afterwards he saw the woman go into a store near by, when he returned to her wagon and said to the boy he would take the chickens—and he laid down a pistareen, took the fowls and left. The mother soon returned and missed her chickens; and when informed of what had been paid for them and in what manner they had been taken, she determined to get her price or her chickens. She observed the deacon moving off, pursued, overtook and confronted him. She recognized her chickens and demanded her price. The deacon, indignant, said he had bought them of the boy and unless she left him and ceased her complaints, he would put law in force against her—and thus got off for the moment. The student advised her to replevy the chickens; she acquiesced; process was issued; and, at the deacon's dinner hour, a sheriff's officer was at his door with the writ of replevin. After making known

his business, the deacon expressed astonishment, said the chickens could not be restored, they were cooked, he had friends to dinner, the fowls were ready to be served up, etc., etc. By this time the chickens were served. The deputy sheriff took them in charge while on their charger and the pious old gentleman charged off to the office of the attorney—in fact, under the advice of the sheriff's officer, to effect an amicable settlement. The sauce to those chickens was expensive, for the deacon paid costs to the amount of thirteen dollars and fifteen cents;—after which he received an order on the sheriff to let the dinner proceed, chickens included.

And suits are sometimes brought for strange things. In 1829 there was an action of trover for an Egyptian mummy in the Circuit Court for the county of Albany. A mummy had been advertised for exhibition in Rensselaerville; and the defendants, young gentlemen of the vicinity, burst into the room where it was deposited at midnight and bore it away, and from that time it had not been seen. The defendants' counsel said it had been strongly intimated that, as a leather whale had been exhibited in the neighborhood a short time before, which had been discovered at Rochester, where an *auto-da-fe* had been made of the unnatural monster, and the discoverers had obtained considerable celebrity, their clients believed this might be a leather mummy. They urged there was no property in it; that it was against feeling and contrary to the laws of the civilized world to permit a traffic in human bodies. Besides, the plaintiffs could not be the legal owners, as they admitted they obtained it from Grand Cairo, where they must have stolen it; that the last lineal descendant was the only one who could with propriety claim the body of his ancestor. The plaintiffs' counsel resisted the suggestion of the defendants as to the mummy not being genuine; they were ready to show the importation of the mummy through the American consul at Trieste, and they were, as well legally as honestly, the owners, because, although they admitted the mummy had been brought to Trieste from Grand Cairo, it was yet for the defendants to show that the lineal heir had not sold the body or that it was not even enjoined

by the laws of Egypt that the heir should always dispose of the embalmed remains of all his progenitors after they had been entombed for three thousand years or that they were not preserved for that purpose. Besides, it was historically known that the ruling pasha of Egypt had become administrator-general of the catcombs and as he did not fear to be called to account by the family of the deceased, he had been quite liberal with his sales. The defendants were not at liberty to set themselves up as heirs without showing a more perfect genealogical tree ; and to the plaintiffs the mummy was not of mere speculative and ideal value, she was of real, substantial use, producing a net income of about eight dollars a day throughout the year. Mr. R. Peale, proprietor of the then New York Museum, testified as to the genuineness of the mummy and stated he had purchased it on its importation ; described it as in curiously perfect preservation, valuable for that reason, as well as on account of its being evidently, from the formation of its face, a female, which had been rarely found. After the evidence had been submitted to the jury by Judge William A. Duer, they gave a verdict for the plaintiffs of twelve hundred dollars, besides costs.

Steele, in the *Tattler*, proposes a penal cure for verbal diarrhoea : " If any lawyer is above two days in drawing a marriage settlement or uses more words in it than one skin of parchment will contain or takes above five pounds for drawing it, let him be thrown over the bar."

Just before a reforming statute closed the Court of Chancery of the State of New York, there was a suit brought by the American Exchange Company against G——, and others, to set aside deeds alleged to have been made by a judgment-debtor in fraud of creditors. The complainants' bill contained one hundred and forty folios, of one hundred words each, while the answer of this judgment-debtor embraced twenty-four thousand folios. The author remembers being in court when it came in, in one of its early stages, and of assisting in making a calculation as to amount of costs involved ; and the conclusion was that, should the suit be even then and there ended, the principal defendant's mere taxable costs,

to say nothing of counsel fees and payments, would amount to about thirteen thousand dollars. The answer was, as may well be supposed, a ponderous tome. The case passed into the Superior Court of New York. Mr. John Van Buren, who was retained as one of the counsel for the plaintiffs, held up this answer to the gaze of the court, observing, "it was the largest web that was ever woven by a small spider." Judge Duer, presiding, suggested it should be sent to the World's Fair as a specimen of American ingenuity.

The trial of Charles B. Huntington, at the General Sessions of New York, in 1856, was remarkable for the extent of the forgeries with which he was charged, and the bold and broad insistment of monomania for forgery as a defence. Mr. A. Oakey Hall, district-attorney, designated it a money-mania. There were twenty-seven indictments. It was said the prisoner had, from first to last, worked up twenty millions of forged paper; and if he had been tried and found guilty and sentenced for the full term on all these indictments, it would have given an aggregate punishment of one hundred and thirty-five years.

Huntington had, through his life, shown some eccentricities. He felt sure he could secure average receipts to the amount of eight hundred dollars a day from a projected steam-laundry on the Isthmus of Panama, which was to wash the dirty linen of emigrants bound to and from California. His fictitious paper bore the names of high and low, from the errand-boy in his office to rich merchants, ranging, to use a phrase which his counsel said was common among his brother brokers, "from *sore noses* to gilt edges." His dwelling was like a storehouse of costly wares and ornaments and had expensive and ingenious culinary articles and household contrivances. There was an immense iron safe filled with plate. His wardrobe was unparalleled in quantity and fineness. His purchases of jewelry were princely and his carriages and horses dashing. He was absurdly liberal in gifts. On one occasion he brought a brass band into his house, which he had ordered to be illuminated from garret to cellar for the occasion, and kept the musicians playing in the hall, while his wife was in bed

with some nervous affection. This was done, as he said, to cheer her up. In no criminal case was the testimony of medical men carried so far to sustain the plea of insanity, of the species familiarly called moral. The press was very strong in denouncing this "new code of morals," and one newspaper declared if these forgeries were the result of moral insanity, all the bulls and bears in Wall-street were morally insane. "Under this code of morals, state prisons are entirely unnecessary; and the man who is guilty of murder or forgery or arson should not be held accountable under the law, because, forsooth, he is afflicted with moral insanity." The feeling against this theory was so rife out-doors that one of the leading medical men, who had given the strongest testimony in this direction, Dr. Chandler R. Gilman, issued, in pamphlet form, a medico-legal examination of the case of Charles B. Huntington. (The trial of Huntington was published in an octavo volume of upwards of four hundred and fifty pages by Voorhies.) In this he defines moral insanity as "a perversion of the feelings, temper and moral dispositions or impulses, without any perceptible aberration of the intellect or any insane hallucinations or delusions;" and illustrates by cases, several of which were followed by conviction and execution, amounting, in his mind, to legal murder. He ends his pamphlet thus: "But, though unwilling to give any opinion as to what should be done, there is yet one question on which the humblest layman, if his heart is in his subject, may and must speak boldly. That question is—What must the law not do? The law must not continue this already too long catalogue of judicial murders. The law must not keep in her rusty armory a test of sanity which every person who has any knowledge of the subject knows to be vain and futile. The law must not keep this relic of an unenlightened age by her, to be brought out as whim or chance or the feeling of the hour may dictate, to slay those whom the Almighty, in His mysterious, most mysterious providence, has visited with a disease, compared to which all other and mere physical diseases are but as nothing. Such beings, instead of being dragged to the scaffold or thrust into the prison-house, should be hallowed by their great misery. The heathen worshipped the tree that had

been struck by lightning : let not Christian men be found less easily moved to sympathy with human sorrows."

In the case of *Gilbert v. The People* (1 *Denio's New York Reports*, 41) will be found a singular specimen of pleading. Parties declared in trespass. Two counts ran thus : "Plaintiffs further declare against the defendant for this, to wit : that the said plaintiffs had a number of sheep in the county of Columbia, and that said *defendant* did, in the year 1843, *if ever*, bite and worry fifty of plaintiffs' sheep, after the said defendant had notice that *he, the defendant, was subject and accustomed to biting and worrying sheep, if such notice be had*, and the said plaintiffs say, that if defendant is guilty of any charge laid in plaintiffs' declaration, *the said defendant ought to be punished according to the custom and manner of punishing sheep-biting dogs*, as the plaintiffs have sustained great damage by the conduct of the defendant." "Plaintiffs further declare against the defendant for this, to wit, that the said defendant *is reported to be fond of sheep, bucks and ewes, and of wool, mutton and lambs* ; and that the defendant did undertake to chase, worry and bite plaintiffs' sheep, *as the said defendant is in the habit of biting sheep, by report*, to plaintiffs' damage in all fifty dollars ; *and if defendant is guilty, he should and ought to be hanged or shot.*"

This gave rise to an indictment for libel, and the defendant therein demurring, on the ground that the alleged libellous matter was charged in the indictment to have been written and published in the course of a regular judicial proceeding, judgment was given for the People, and it came before the Supreme Court. Justice Beardsley, in rendering final decision, said : "The alleged libellous matter was part of a declaration in a justice's court, which was prepared and presented to the justice by the plaintiff in error, who held on that occasion for the plaintiffs in the cause. The action was trespass, for entering the close of the plaintiffs, and taking and killing divers sheep and for other alleged injuries to sheep, wool, sheepskins and mutton. Supposing the declaration, in stating these grievances, to be free from objection, it still had other statements and insinuations which could not but have been intended to

stir up the passions of the defendant in that suit and to make him an object of dark suspicion as well as of ridicule and contempt. The declaration alleged that the defendant was 'reported to be fond of sheep, bucks and ewes, and of wool, mutton and lambs,' and 'in the habit of biting sheep,' and it was added that if guilty he 'ought to be hanged or shot.' These and other suggestions of the like character, to be found in this declaration, were in no respect relevant or material to the action, and obviously must have been thrown in to scandalize and annoy the defendant. What had the court to do with these alleged 'reports' and 'habits?' Certainly nothing. They could have no possible bearing on the issue to be tried or the damages which might be assessed for the alleged trespass, although they might very well serve to irritate and disgrace the party who was charged to be the subject of such reports and habits. It would be lamentable if irrelevant, gratuitous and malicious attacks could be excused because inserted in a declaration upon other and distinct causes of action, with which the vituperative charges had no connection whatever. The demurrer admits that these charges and insinuations were false and malicious; and as they were in no sense pertinent to the action, they were libellous."

Mr. G——, of Syracuse, had a litigious client in an old farmer named Merrick, who was in hot water with a cabinet-maker. A compromise was effected, by which Merrick was to take, in full of all demands, the cabinet-maker's note at six months, "payable in cabinetware." About half a year afterwards Merrick came riding up to Mr. G——'s office, dismounted, and rushing in, exclaimed—"I say, squire, am I bound to take coffins?" It appeared that, on the note falling due, the cabinet-maker had refused to pay save in the shape of such "cabinetware" as coffins.

There is an action in the third judicial district of New York, still unsettled, wherein there have been eight trials, and the unfortunate plaintiff, a widow, is now at her first starting-point. In 1855 a man was run over and killed by one of the Hudson River Railroad cars. His widow and administratrix brought an action to recover damages for wrongfully killing him. The case was first

tried before a justice ; and the plaintiff was nonsuited. She appealed to the Supreme Court ; and the nonsuit was set aside. It was then tried before another justice ; and the plaintiff got a verdict for two thousand five hundred dollars. The railroad company now appealed ; and on this, the fourth trial, the verdict of two thousand five hundred dollars was affirmed. The company again appealed and so the fifth trial was had before the Court of Appeals, which reversed the former decisions and ordered a new trial before a justice. This gave rise to the sixth trial, which came off before another justice, who nonsuited the plaintiff. She again appealed, and the seventh trial took place before the Supreme Court, which this time affirmed the nonsuit. But the widow and administratrix again appealed to the highest court ; and the eighth trial was had before the Court of Appeals. This court reversed all the former decisions and sent the matter down to the justice to begin over again, where it is at the present writing. The case, thus far, has lasted eleven years.

It may well be that railroad companies should be held responsible and compelled to respond in full damages for negligence ; and they certainly seldom escape. Indeed, their counsel so well know how the popular feeling is against them, that the advice is generally to settle, even in doubtful cases ; and lawyers can always work up a speech when engaged in cases of accident against such a company. Judges, too, generally, take the popular side ; and, therefore, it is quite refreshing to read with what healthy good sense Justice George Gould, of the Supreme Court of this State, protectively talks of railroad companies, in the very case to which we have referred :

“ It is quite usual, in similar suits, to find counsel and sometimes judges disposed to dwell upon the alarming power of a locomotive and the appalling danger of running one anywhere but in a wilderness ; and great stress is laid on the strict and untiring watchfulness and care that are required of those who use so dangerous a thing. All this is very true. But there are two sides to these facts. If a locomotive be eminently dangerous, everybody knows it to be so. And it is as dangerous to run against or under it as to have it run over you. A railroad-crossing is known to be

a dangerous place, and the man who, knowing it to be a railroad-crossing, approaches it, is careless, except he approaches it as if it were dangerous. To him the danger is vastly greater than it is to the locomotive: he may lose his life. And if the company be bound to use very great care not to endanger him, why is not he bound to use equally great care not to be endangered? His care should be as much graduated as the company's. When every one, who knows that the railroad is there, is bound to know and to remember that a train may be approaching, not to take the very simple precaution of looking and listening, to find out whether one is coming, cannot but be want of care. To be sure, the statute requires a railroad company to give specified warnings; but it neither takes away a man's senses, nor excuses him from using them. The danger may be there: the precaution is simple. To stop, to pause, is certainly safe. His time to do so is before he puts himself in 'the very road of casualty.' And if he fails to do so, it is of no consequence, in the eye of the law, whether he merely misjudges or is obstinately reckless. His act is not careful; and he is to abide the consequences, not the company under or into whose train he saw fit to run, whether he did so in inexcusable ignorance or in the belief that he could run the gauntlet unharmed. Nor is the court to look about to find how he, after putting himself there, conducted; whether he took the best means of escape or in his confusion ran more hopelessly into the jaws of death. No degree of presence of mind and no want of presence of mind at that time has any thing to do with the case. He should not be there by want of care.

"Much weight is given to the fact that the place of such collisions is the highway and that the traveller has a right to be there with his vehicle. Certainly it is a highway or he would have no right to be there at all and he could not recover, no matter what might be the negligence of the companies. Further, it is a part of a railroad track; and the train has a right to pass there. It is a place in which two easements have a common right; and it is the right of the public that both shall be so enjoyed as not unnecessarily to interfere with or abridge the rights of either.

"A sound and reasonable view of cases of this description is of as

much importance to the public as it is to railroad companies. Such corporations are to be treated precisely as any other party to a suit. No more stringent rule is to be applied to them than is applied to individuals; nor is any less stringent one. Every citizen of the State has a deep interest in the existence and successful operations of such companies. The facilities of travel which they afford, the means they give of accumulating and of diffusing the products of our wide land and of our vast commerce, have already produced the mightiest results in the developement and the unparalleled increase of the resources of the nation. They have clothed us with the richest garments of peace; and they have multiplied our armies and wielded our weapons of war. To do this, they have needed those powerful means, the use of which is necessarily accompanied with danger. But, as the public has the benefit of those means, it is bound to incur its own share of that danger. A mutual duty is enjoined and a mutual liability results from a failure to perform that duty; and a party who fails in performing his own part thereof is in no condition to enforce the penalty of a breach on the other party." (*Wilds v. The Hudson River Railroad Company*, 24 *New York Reports* (10 E. P. Smith), 430. Same case in Supreme Court, 33 Bar. S. C. R. 503.)

Our law causes, however, bear no comparison in length to some in England. The Berkeley suit lasted upwards of one hundred and ninety years. It commenced shortly after the death of Thomas, fourth Lord Berkeley, in the fifth of Henry the Fifth (1416), and terminated in the seventh of James the First (1609). It arose out of the marriage of Elizabeth, only daughter and heiress of the above baron, with Richard Beauchamp, Earl of Warwick, their descendants having continually sought to get possession of the castle and lordship of Berkeley, which not only occasioned the famous lawsuit in question, but was often attended with the most violent quarrels on both sides, at least during the first fifty years or more. In 1469 (tenth of Edward the Fourth) Thomas Talbot, second Viscount Lisle, great grandson of the above Elizabeth, residing at Wotton-under-Edge, was killed at Nibley Green, in a furious skirmish between some five hundred of his own retainers

and about as many of those of William, then Lord Berkeley, whom he had challenged to the field, who likewise headed his men, when, besides the brave but ill-fated young Lisle, scarce of age, about one hundred and fifty of their followers were slain and three hundred wounded, chiefly of the Wotton party, who fled on the fall of their leader. Lord Lisle's sisters were his heirs; and their husbands, one of whom also got the title, followed up the suit, as their descendants did after them, till down to the time of the first James, when Henry, eleventh Lord Berkeley, obtained a decree in favor of his claims and got full and quiet possession of the lands and manors in dispute.

There are remarkable cases on the law books where persons with a full belief in the innocency of their acts, become liable in damages as wrong-doers. Thus, in the well-known English case of a man throwing a lighted squib into a market-house, where a concourse were assembled, and it fell upon a stand the owner of which, to prevent injury, threw it across the market, when it fell upon another stand, from whence, to save the goods of the owner, it was thrown to another part of the market-house and struck a person on the face and, bursting, put out one of his eyes. Here the first thrower was made answerable, because he was the author of the mischief. All that was done subsequent to the original throwing was a continuation of the first force and first act. Any innocent person removing the danger from himself was justifiable.

There was a case somewhat peculiar tried in New York in 1821. A man named Guille had gone up in a balloon near Swan's garden, in the city of New York, and descended in this garden. When he descended, his body was hanging out of the car of the balloon in a very perilous position, and he called to a person at work in Swan's garden to help him, in a voice audible to a pursuing crowd. After the balloon descended, it dragged along over potatoes and radishes about thirty feet, when Guille was taken out. The balloon was carried to a barn at the further end of the premises. When it descended, more than two hundred persons broke into Swan's garden through the fences and came upon his premises, thereby crushing vegetables and flowers. The damage done by

Guille with his balloon was about fifteen dollars, but the crowd did much more. Swan's damage in all amounted to ninety dollars. The justice before whom the action was tried decided that Guille, the aeronaut, was answerable for all the damage and found a verdict against him for ninety dollars. It went before the Supreme Court on *certiorari*, where Chief-Justice Spencer delivered the opinion of the Court.

"I will not say," observed his honor, "that ascending in a balloon is an unlawful act, for it is not so; but it is certain that the aeronaut has no control over its motion horizontally. He is at the sport of the winds and is to descend as and when he can. His reaching earth is a matter of hazard. He did descend on the premises of Swan, at a short distance from the place where he ascended. Now, if his descent, under such circumstances, would ordinarily and naturally draw a crowd of people about him, either from curiosity or for the purpose of rescuing him from a perilous situation, all this he ought to have foreseen and must be responsible for. Whether the crowd heard him call for help or not is immaterial. He had put himself in a situation to invite help and they rushed forward, impelled, perhaps, by the double motive of rendering aid and gratifying a curiosity which he had excited. Can it be doubted that if Guille had beckoned the crowd to come to his assistance that he would be liable for their trespass in entering the enclosure? I think not. In that case they would have been co-trespassers; and we must consider the situation in which he placed himself, voluntarily and designedly, as equivalent to a direct request to the crowd to follow him. In the present case he did call for help and may have been heard by the crowd. He is, therefore, undoubtedly liable for all the injury sustained." (*Guille v. Swan*, 19 *Johnson's Reports*, 381.)

Mr. Wolfe had a house in New York city; and he directed his servant, Fagan, in a winter's morning, to take the snow off the roof, as the latter leaked. Fagan did not go at the work immediately, as Mrs. Wolfe had sent him for a doctor. On returning, he stopped to speak to an acquaintance, Cushan, and asked him to go and help him. They went upon the roof and commenced

shovelling. Fagan used a wooden and Cushan an iron shovel. Fagan, hearing a noise in the street, looked over the coping and saw that somebody was hurt and, so, went down. It turned out that a Mr. Warner, in passing Wolfe's house, was struck with snow and ice thrown from the roof, producing a fracture of the skull and injuries to the brain which caused his death in a short time. His administrator brought an action against Mr. Wolfe for damages, by reason of such wounds and injuries resulting in death. Fagan, as a witness, declared he shovelled no ice, and saw none; that neither he nor Cushan shovelled very fast, and he could not tell who threw the last shovelful of snow before Warren was hurt. He saw no ice upon the roof or upon the sidewalk. Mr. Wolfe had not given him any particular instructions as to how he should take the snow off the roof. Fagan also said that Cushan was assisting him at his suggestion and without any authority from Wolfe to employ any one. While Cushan testified that he was not employed by any one; Fagan, who was a friend of his, asked him to help him and as he had nothing to do, he went to oblige him. They were working on the roof beside each other and about four feet apart. He saw a little ice on the roof, near the trimming, but "he knew that he threw it into the middle of the street; unless a bit may have fallen on the sidewalk; and that, when Fagan looked over the coping, he stopped the witness from doing further shovelling."

A verdict of \$3,500 was found against Mr. Wolfe. Nor was it disturbed when the case was taken to the Court of Appeals, although there was a difference of opinion among the judges. One of the majority observed: "Instead of himself (that is, the defendant Wolfe), superintending the work of clearing the roof, he directed his servant to do it—giving no special instructions as to the mode of doing it, nor restricting the latter in any way from procuring aid." (*Althorf v. Wolfe*, 8 *E. Peshine Smith's Reports*, 355.)

Besides this verdict of \$3,500, Warner's widow had received \$2,500 under a policy on her husband's life.

There was another peculiar case, which was tried at Schenectady

in 1847. Truax had a store there. A negro boy, about sixteen or eighteen years of age, was ostler to Vandenburg. The boy was seen in the street, near to Truax's store, approaching Vandenburg with a stone in his hand and appearing to be very angry. Vandenburg took hold of the negro and told him to throw the stone down ; and, it is presumed he did so. The boy got loose and ran away ; and Vandenburg took up a pickaxe and followed the boy, who fled into Truax's store ; and Vandenburg pursued him there with the pickaxe in his hand. The back-door of the store was shut, so that the boy could not get out there without being overtaken, and he ran behind the counter to save himself from being struck with the pickaxe. In fleeing behind the counter, the boy knocked out the cock or faucet from a cask of wine and about two gallons of it were spilled and lost—value of it about four dollars. The justice before whom the case came gave judgment against Vandenburg for a like sum. When the case came up on error, Vandenburg's counsel insisted that the negro was to be considered a free agent, at liberty to go where he pleased and it could not be said that Vandenburg drove him into Truax's store against the cask of wine. But the court sustained the finding of the justice, observing, that although the negro boy might have been wrong at the first, yet, when he had thrown down the stone and was endeavoring to get away from the difficulty into which he had brought himself, Vandenburg was clearly wrong in following up the difficulty ; and when the boy ran upon the cask of wine, he was moved with terror produced by this illegal act. He was fleeing for his life, from a man in hot pursuit, armed with a deadly weapon and although the injury which Truax had sustained was not the necessary consequence of the wrong done by Vandenburg, yet it was of such a nature that it might very naturally result in an injury to a third person. (*Vandenburg v. Truax*, 4 *Denio's Reports*, 464.)

A case, peculiar and remarkable on account of the amount demanded for work soon done, lately came before a Supreme Court Circuit in New York. Mehrback brought action against Platt to recover \$1,250, claimed to be due under the following circum-

stances : Mehrback was a dealer in horses, and had the reputation of being a judge of "horse-flesh." Platt had a contract with the Hudson River Railroad Company to propel their cars through New York City by horse-power and for this purpose a large number were required. When "dummy-power" was allowed, this contract ceased ; and Platt, desiring to get rid of his horses, made some arrangement whereby a valuation should be made and the company take them. Appraisers were to be mutually appointed. Mehrback was named by Platt as his appraiser. The company, however, withdrew, declining to take the horses at the appraisal. Mehrback employed himself one day as such appraiser, and now claimed \$1,250 for his labor. One of the ways in which the amount was arrived at was through an insistment of the plaintiff's, that, by special agreement, he was to have five per cent. on the estimated value of the horses, which, it was thought, might be made to reach the sum of twenty-five thousand dollars,—thus giving, at the rate of such per centage, \$1,250.

The defendant, Platt, claimed that when he obtained the services of the plaintiff for the purpose of appraising the value of the horses, it was understood between them that payment was to be made in kind—in other words, the defendant was to appraise something for plaintiff, and he did value several houses, for which he claimed a similar sum, \$1,250.

Testimony went to show that there had been corruption on the part of some one or more persons connected with and interested in the transaction embraced by the matters of the suit. Much was said about the special agreement being "greased," by which word counsel and witnesses said they understood that certain men had been bribed or, at any rate, a very persistent attempt had been made to bribe. Counsel for the respective parties, in summing up, admitted that such a case had never before occurred and the hope was expressed against a similar one turning up—while \$1,250 was regarded by all as a good round sum for a day's work. One of the counsel said that the President received less than seventy dollars a day and, here, this plaintiff demanded compensation for more than eighteen times this amount. Judge Mullen, in his

charge to the jury, among other things, observed that this was one of the most remarkable cases which had ever come before him as a member of the bench or bar. If there had been a corrupt agreement, whereby the plaintiff was to have five per cent. or any other per centage, on the appraised value of the horses, and his pay was, by agreement, principally dependent on the price he could put upon the horses, then neither party ought to have any standing in court. Judgment for defendant.

Alexander Wistelo was a black man, servant with the late Dr. Alexander Hossack, of New York; and Lucy Williams was a mulattress. The latter—this was in the year 1808—had a child whose hair and most of its features were those of a white infant. The color was somewhat darker than a white, but lighter than most of the mulatto children.

The woman made positive oath that Wistelo was its father. He did not deny intimacy, but relied upon the appearance of the child to destroy the evidence of the mother.

The case came ultimately before the Mayor of New York (De Witt Clinton), the Recorder (Van Wyck), and three aldermen.

The woman's chastity, in a single white direction, was, after rigid cross-examination, rendered doubtful.

The leading medical men of New York were brought up as witnesses; and their testimony was interesting, touching, as it did, the question of Albinos, change of appearance from fright of mother, prodigies, laws of nature, parts that indicate color and general rules of experience; and all of them, save one, testified to their belief that the child was the offspring of a white man. This exception was the well-known scientific and somewhat eccentric Dr. Mitchell. He, after some explanatory answers, said:

"In estimating this case according to the exceptions laid down and which I have observed are so frequent and often so widely deviating from the general rule, I conceive that it violates no probability to suppose this child the offspring of the connection between the woman and the black man. The mother, who knows most of the matter, has deposed to that fact and it is not in itself incredible. I have, therefore, no hesitation to say, according to the best

of my judgment, as the evidence of the woman is positive and the fact she swears to violates no probability, I should, were I in the place of the court, confirm the rule."

Cross-examined by Morton.—This case you say, doctor, violates no probability. Are we to understand from that, that it is a possible case or a probable one? Or, let me ask you, according to your own principles, which is most probable, leaving the woman's evidence out of the question, that this should be the child of a black or white man?

Answer.—*Prima facie*, I should say it was a case under the general rule. If I did not adhere to the rule, it would be on account of the circumstances attending the case, which I take to be an exception; for if I have no knowledge of any matters which go positively to contradict the woman's testimony, I should naturally lean towards it.

Q. Do you consider this case as having any affinity with what is called albinage?

A. I have not much experience on the subject of albinos, as my residence has been chiefly in New York, where such accidents rarely occur. But I have known instances of negroes turning white where there was no symptom of disease or sickness.

Counsel.—Have the goodness, doctor, to relate them.

Dr. Mitchell then referred to his own note of Moss's case, and also to the cases of Maurice and Pompey. These read thus:

Moss's Case.—"Some time in the year 1792, Henry Moss, who was born of black parents, and as black himself as negroes generally are, began to grow white. The first whiteness began about the nails of the fingers; but in the course of the change none of them have fallen off, except those of the little toes. There has been no scabbiness, ulceration or falling off of the cuticle, nor could this covering be removed by rubbing, washing or chafing. The whiteness has spread over the whole body, neck, shoulders and arms and down the thighs and legs. Some brownness remains in his face, hands and feet. He thinks his sense of touch more acute than it used to be; and his feelings so sharpened that he is more readily affected by the solar warmth than he formerly

was—being able, while he was black, to support great degrees of sunshining heat. A change has taken place in his sight. He has had no sickness before or during this alteration of color to account for it. The skin is of the white carnation hue and the blue veins plainly visible through it. The *rete mucosum* seems to have undergone the principal change. His woolly hair is falling out and straight hair coming in its place on his head and the same thing has already happened on his legs. He observes his flesh is now less disposed to heal from wounds and cuts than it used to be.”

Maurice's Case.—“A young negro, named Maurice, aged twenty-five years, began about seven years ago to lose his native color. A white spot appeared on the right side of his belly, which is now about as large as the palms of two hands. Another white spot has appeared on his breast and several more on his arms and other parts; and the sable cloud is plainly disappearing on his shoulder. The skin of these fair spots is not surpassed by the European complexion. His general health is and has been good; and he has suffered no scalding, ulceration, scabbiness or other local disease. The change is not the dead white of the albinos, but is a good wholesome carnation hue. Such an alteration of color as this militates powerfully against the opinion adopted by some modern philosophers, that the negroes are a different *species* of the human race from the whites, and tends strongly to corroborate the probability of the derivation of all the *varieties* of mankind from a single pair. Facts of this kind are of great value to the zoologist. How additionally singular would it be, if instances of the spontaneous disappearance of this sable mark of distinction between slaves and their masters were to become frequent! They would then be no less important to the moralist and political economist.”

Pompey's Case.—“Pompey, a very healthy negro of about twenty-six years of age, about two years since discovered on his right thigh a small white spot, which from that to the present time has been constantly increasing to the size of nearly a half-crown piece; while there have appeared, on other parts of his body,

other spots to the number of twelve, of different sizes, but all constantly and gradually enlarging. In several of the spots the margin is perfectly defined from a distinct line between the clear white and the natural color. In others there are circumscribed rings of a dun appearance, the external margin of which is very regular. I have the fullest belief that a very few years will complete the total change."

Counsel.—Was there not some other case which you mentioned before the police office?

Answer.—I mentioned somewhat jocularly the loves of Theagines and Charidea. Charidea was a beautiful and fair virgin of Ethiopian parents. Her whiteness was occasioned by her looking on a statue of Venus.

Question by the Mayor.—About what time, doctor, might that have happened?

A. The work is written by a Christian bishop, Heliodorus, who wrote about the fourth century. It was the first novel I ever read and made a great impression on me.

Q. As to those cases in which the agency of some external objects upon the mother's imagination produces an entire change in the foetus, have you any facts within your own knowledge?

A. There was a man in the city of New York who kept a cow. The cow was a favorite with the wife of the man, but he found it more convenient to kill her than to keep her. The cow, affording a larger supply of provision than was required for family consumption, he sold part and reserved the rest. Among the parts that were reserved were the feet. The wife saw them hanging up in a mangled state. It was the first news she had of the death of her favorite cow; and she was so vehemently moved and so shocked as to affect the child of which she was then pregnant.

Q. And what was the result?

A. The child was born without any arms and with distorted feet.

Q. Did you ever converse with the father or mother of the child?

A. I did not; but the child is still alive and there is no doubt of the fact.

Q. Have you examined the child ?

A. I saw it once as I passed, playing with a cooper's shaving knife between its toes. I stopped to inquire and was told the story.

Q. Is there no other case, ancient or modern, to support this theory—is there nothing in verse or prose ?

A. There is a case, called the Black case, in Haddington's poems. He was a lord of sessions or other considerable man in Scotland. The story runs thus : There was a man who followed the profession of an attorney or a scrivener, who had a very amorous wife ; but he had not leisure to attend to all her gayeties. Once that he was unable otherwise to free himself from her importunities, in toying with her he upset his inkbottle in her shoes. She brought him a black child in consequence. He reproached her, but she reminded him of the inkbottle and of his awkwardness. There is also the story by Malebranche of the woman who saw a man broken on the wheel and bore a mangled and disjointed child. If such changes as the last are true, and there is strong authority for it, then the mere change of color or complexion is not difficult to believe.

At this point the cross-examination was taken up by Mr. Sampson, and it was extended over a variety of topics, bringing out anecdote and repartee. After a time it was thus continued :

Counsel.—What do you think, doctor, of the opinions of Plato, touching the principles of generation ?

Witness.—Do you mean, also, to ask me Pythagoras's opinion on wild fowl ?

Counsel.—Far be it from me, sir ; that question might serve to puzzle a man who was in the dark—mine are meant to elicit light from a source where it abounds.

Witness (bowing).—I do not know, sir, to what particular opinions you allude.

Counsel.—To his triangle of generation, as well as to the harmonies and mysteries of the number three.

A. I have never devoted any attention to such mysteries. A triangle has three sides and three angles, if you can find out the mystery of that.

Q. Has not a prism three sides and three angles.

A. It has.

Q. Could Plato have meant that any thing resembling a prism could have an influence on generation ?

A. You seem, sir, to have thought enough upon the subject to judge.

Q. Sometimes the more we look the less we see. Can you, upon any principle of plain or spheric trigonometry, produce a triangle which shall be flat on one side and round on the other ?

Witness.—That, perhaps, is an Irish triangle. If so, you can produce it yourself. Will you permit me now, sir, to examine you a little ?

Counsel.—Oh, doctor, you cannot be serious—not, surely, in the face of the court !

The Mayor.—I think, Mr. Sampson, after the manner in which you have examined the witness, he is entitled to what he desires.

Counsel.—Alas, sir, I am but a poor tradesman, laboring at my vocation ; if I let him wind that long chain of causes and effects round me, I shall be so entangled I shall never be myself again. It is play to him but death to me. I pray the court to let the shoemaker stick to his last.

Q. Doctor, are you familiar with the opinions of Aristotle upon matter and motion ?

A. Your question, sir, is very general.

Q. I shall be more particular. Do you believe that matter is the capacity of receiving form ?

A. I believe there is a first cause which is the law to which all matter is subject.

Q. The first cause is too far off for my span ; let us keep to one less remote. Is it not a corollary from the opinion of Aristotle that the son should resemble his father ?

A. I do not see that it is.

Q. I wish, doctor, I could establish some difference between you and these great luminaries of ancient times. The authority of your opinion requires some such powerful counterpoise.

A. Well, sir, propose your questions.

Q. Since I cannot press these great men of antiquity into our service, I shall endeavor to find something in Dr. Mitchell to set off against Dr. Mitchell. The counsel on the other side will not fail to avail himself of your opinions to the utmost extent, perhaps beyond your intention. I wish, therefore, by taking your opinion touching the probability of other facts, to find what degree of belief you attach to the present and, by establishing a standard of faith, fix a boundary line between us ; and also to discover, if possible, how much light learned opinions may throw upon this cause.

A. Some years ago there was a machine invented, called a light guage or photometer, which was to measure the degrees both of light and shade ; but part of it always failed or broke or, for want of encouragement, it never was brought to perfection.

Q. Oh, what a pity ! I once projected a machine to measure happiness, wisdom, love and other moral qualities and affections ; but the ladies secretly discouraged it, fearing to have it known how they loved the fellows. Since then that our machines are out of order, doctor, we must proceed by the imperfect modes of our fathers. Are you acquainted with a story related by Mr. Saussure, of a lady of quality of Milan who had seven sons ?

A. I have no recollection of such a story.

Q. It was this : the two first of her sons and also the two last had brown hair and black eyes ; the three intervening had red hair and blue eyes.

A. Very possible.

Q. That is not all. The author accounts for it in this way : that while the mother was pregnant with three red-haired and blue-eyed children, she had also conceived a violent passion for milk, in which she indulged to excess. This might, when related by Mr. Saussure, have passed for a traveller's story ; but it is adopted by an eminent physiologist, Mr. Buzzi, surgeon of the hospital of Milan. What would you infer in such a case ?

A. I would infer that the milk must have been rather of a cream color. It must have been milk and water, or skimmed milk. It is a loss that the case does not mention which.

Q. Do you think it credible, sir, that Louis the Second, king of

Hungary and Bohemia, was born without his epidermis or scarf-skin?

A. It is not impossible.

Q. Yet for a king to come without his skin, that was coming very naked into the world. What do you think of Zoroaster, king of the Bactryans?

A. I have never thought about him.

Q. Pliny says he came laughing into the world; is that probable?

A. It would be an exception to the general rule, for we generally come into the world crying. And seldom go out of it laughing; so that as the only time we have to laugh is when we are in it, it is wise to profit by it.

Q. Do you recollect Pliny's remark upon this king, that he little knew what a world he was coming into, for if he had foreseen his destiny, he would not have been so merry?

A. It was a witty remark of Pliny if it was his.

Q. Apropos. May I ask what you think of the opinion of the great Verulam, that when mothers eat quinces and coriander-seed, the children will be witty?

A. Some persons have a great deal of wit, but I don't know how they came by it.

Q. Do you think, doctor, as the counsel on the other side does, that a pistol is an instrument of much efficacy in generation?

A. On the contrary, sir, a pistol is generally used to take away life. There is what is called the *canon de la vie*. Do you mean that?

Counsel.—Of what color may that be, doctor?

A. It may be black or white.

Q. Which of the two would be most influential on the birth of a white child?

A. Most probably the white.

Counsel.—There it is! Did you ever hear how the mistress of Pope Nicholas III. was brought to bed of a young bear?

A. No, sir, but many women have had bearish children.

Q. After that, I think they may bear any thing. Do you

find a great affinity in what concerns generation between man and beast ?

A. Undoubtedly.

Q. May not the principle of maternal affection influence in one as in the other ?

A. I am of that opinion.

Q. So that when the Dutch farmers on Long Island plough a black mare with a bay horse, to have a bay colt, the idea is not unreasonable ?

A. There is nothing unreasonable in ploughing a black mare with a bay horse, nor in a black mare having a bay foal, more than a black hen having a white egg.

Q. Does not Mr. D'Azara lean to the notion of a primitive color ?

A. He gives the philosophers their choice in supposing our first parents to have been either of a white or black complexion.

Q. How do you account for the ring-streaking of Laban's lambs ?

A. The fact we cannot doubt ; we have it on such high authority.

Q. Does it appear to you an extraordinary interference of Providence in favor of an individual or can it be accounted for by the principle of maternal affection and by the ordinary laws of nature ?

A. By the ordinary laws of nature.

Counsel.—That being the case, doctor, there remains only to thank you for the information you have given us.

The court, after some preliminary observations and saying the case involved a most important question in physiology and that the most respectable gentlemen in the city unanimously declared that Whistelo was not the father of the child as it would be a deviation from the course of nature, went on thus : "The only opinion which militates against the united voice of the profession is that of Doctor Mitchell ; and this is more in appearance than in reality. That learned gentleman has explicitly admitted that the offspring of the mother and the defendant would, according to the ordinary laws of nature, possess a color lighter than that of the father and darker than that of the mother ; and that, on the pre-

sumption of their being the parents, the appearance of the present child would be an anomaly in the science of man and a departure from the usual operations of nature. If, therefore, nothing further appeared before the court, we would not hesitate to decide against the appellants; as we undoubtedly repose less confidence in the oath of the woman than in the opinions of the medical gentlemen who have appeared here as witnesses, corroborated by every appearance and by our own observations. And it cannot, certainly, be expected that we would have recourse to the miraculous to bear out and support the testimony of the mother. The rule in dramatic poetry will apply to cases of this nature.

*"Nec Deus intersit nisi dignius vindice nodus,
Inciderit."*

(3 *Wheeler's Crim. Cas.*, 194.)

Dr. Mitchell's notions are thus touched upon in Dunglison's *Physiology*, vol. 2, p. 316. "Dr. Mitchell's opinion on Whistelo's case does not seem entitled to much greater estimation than that of a poor Irish woman in a recent London police report, who ascribed the fact of her having brought forth a thick-lipped, woolly-headed urchin to her having eaten some black potatoes during her pregnancy."

In 1817 Mr. Aaron H. Palmer was a counsellor, master in chancery and attorney in New York; and in the same city there was a portrait painter named Francis Mezzara. The latter, meeting Mr. Palmer at Baron Quenette's, proposed and was solicitous to draw a portrait of Palmer, because, as he said, there was a very striking peculiarity in the forehead and the head was a study, expressing it in French *une tête d'étude*. It eventuated in a reluctant sitting and the portrait was framed and exhibited at the then Academy of Arts. Mr. Palmer's friends did not like and pronounced it to be a caricature. Tender was made of the full charge of the picture, but Mezzara, considering his skill decried and his feelings wounded, refused to receive the money and was very vindictive in his remarks. Afterwards, he was inclined to take the money, but, then, Mr. Palmer would not give it. The

painter brought an action for the price of the picture, but failed in it. On meeting Mr. Palmer, who was with two acquaintances, he invited them to his room to inspect the picture; and this they did—when Mezzara became abusive and as they were leaving the room, he took chalk and sketched ass's ears on the head of the picture, threatening to paint them thereon and expose it in Broadway. On an execution under a judgment in favor of Palmer in the action wherein the artist had failed, this picture was levied on by the sheriff. Then followed this notice in the Republican Chronicle:

“*Curious Sheriff's Sale.*—We have been requested to mention, that there will be sold this forenoon, at public vendue, at No. 133 Water-street, a PICTURE *intended* for the likeness of a gentleman in this city, who ordered it to be painted. But as the gentleman disclaimed it, it remained the property of the painter and is now seized by execution. In order to enhance its value, the painter, who is an eminent artist from Rome, has decorated it with a pair of *long ears*, such as are usually worn by a certain stupid animal. The goods can be inspected previous to the sale.”

Mezzara was traced as the party dictating and causing the above to be inserted in the newspaper; and, thereupon indicted as for a libel.

Mr. Martin S. Wilkins was one of the counsel on behalf of the prosecution; and in the course of summing up said—after referring to the necessity to restrain the accused from similarly offending by the wholesome restraint of a verdict—“and yet, gentlemen of the jury, what is to be done with the man? Should you acquit him, he still continues to hold up the respectable citizen, this counsellor and master in chancery, to public contempt and ridicule. Should you find him guilty, I am not certain but that, to revenge himself, he will draw your pictures with his ass's ears! and,” added the counsel, casting his eyes towards the court with that peculiar gravity which he could put on, “I fear their honors on the bench will share the same fate.”

The mayor, Jacob Radcliff, told the jury tersely and rightly that any publication, picture or sign, made with a mischievous or

malicious design, which holds up any person to public contempt or ridicule is denominated a libel. The jury found Mezzara guilty; and he was sentenced to pay a fine of one hundred dollars.

This reminds one of a case which occurred in England in 1810. Mr. Thomas Hope, the author of perhaps the best English novel "Anastatius" and a gentleman of wealth and high social position, had married a very beautiful woman; and an artist named Du Bost was employed to paint her picture. He so signally failed that the husband refused to receive and pay for the picture. Now, Hope the wealthy man was not, in features, "Hope, the charmer." The painter added to the lady's portrait a caricature of the husband's head, called the picture "*La Belle et la Bête*" or "Beauty and the Beast" and had it exhibited in a house in Pall Mall, London, for money and great crowds went daily to see it. One morning, Mr. Beresford, brother of Mrs. Hope, went and cut and destroyed the picture. Du Bost brought an action against him for cutting and destroying a picture of great value which he had exhibited, whereby he not only lost the picture but the profits he would have derived from the exhibition. For Mr. Beresford it was insisted that the exhibition was a public nuisance, which every one had a right to abate by destroying the picture. Lord Ellenborough, before whom the cause was tried, said, the material question was, as to the value to be set upon the article destroyed. If it was a libel upon the persons introduced into it, the law would not consider it valuable as a picture; that on an application to the Lord Chancellor he would have granted an injunction against its exhibition; and the plaintiff was both civilly and criminally liable for having exhibited it. And the jury, in assessing the damages, must not consider this as a work of art, but should award the plaintiff merely the value of the canvas and paint which formed its component parts. Verdict for plaintiff, damages five pounds. (2 *Campb. R.*, 511.)

We confess we have not been able to trace the action referred to in the following; but we are, nevertheless, inclined to give the article from the *Albany Express* (1857). A New York merchant recently sent for a cargo of Maltese cats, per schooner "Wil-

liam E. Callis," of Nantucket, Captain Smith. Fifty kittens were received at Malta on board the schooner as part of the assorted cargo. On the voyage very rough weather was experienced. At first the tars attributed the rapid succession of gales to the comet; but one old sailor told the crew that it was nothing outside the vessel that occasioned the storm; that one cat was enough to send any ship to Davy Jones' locker and as they had fifty on board, not a man of them stood a chance of setting foot on dry land again. This was enough for the superstitious crew and the cats were immediately demanded of the captain, given up and drowned. By a singular coincidence the storm thereupon abated. The owner of the cats has now sued the owners of the vessel for damages, laying the value of the cats at \$50 apiece or \$2,500.

A charge of assault and battery and false imprisonment of a somewhat peculiar kind, was, in 1819, made by Mr. John A. Graham, counsellor of the New York bar, against James W. Lent, Jr., a turnkey of the bridewell. Mr. Graham or as he chose generally to be called Dr. Graham went to the bridewell to see and consult with one Jordan, a prisoner. He found Lent apparently dozing, who, on being informed by him that he wanted to see the prisoner, took the key and accompanied the counsellor to the front door leading to the prisoner's room and there halted and, without opening the door, demanded five dollars of him. Upon this, the doctor asked Lent his meaning and claimed entrance, which was then granted, although with reluctance. He hesitated in opening the door to the prisoner's room; and when this was done, Dr. Graham told him that he should be detained with the prisoner not to exceed six minutes. He finished his business; and Lent not appearing to unlock the door in about fifteen minutes from the time the doctor of laws entered, he began to make a noise with a chain and call aloud to those he saw passing by and begged their assistance; but no one came to his relief. At length he saw a person passing the prison, called aloud and requested him to go to the keeper and give information. After a detainer of about half an hour, Lent came and opened the door, when the

counsellor told him he had treated him like a scoundrel and threatened to complain to the grand jury. Whereupon Lent shook his fist in his face, used insulting language and pursued him over to his office with threats and curses. Afterwards Lent made another assault—but without battery—in the street. In the course of his testimony, our counsellor said he verily believed the conduct of Lent towards him originated in his refusing to give him five dollars. It had been customary for counsel, who frequently went into bridewell to see prisoners, to give turnkeys presents for trouble ; and the complainant had, but a short time before, given Lent a small sum.

The court, in charging the jury, said that Dr. Graham had a right to visit the prison ; and this turnkey, in obstructing his entrance and detaining him, committed an outrage on public justice. The demand for five dollars was scandalous and not extenuated by any usage. It was the duty of the turnkey to have attended at or near the door and unlocked it. And if forgetfulness (which had been urged) was to be a good plea, he might imprison a citizen a whole night. Conviction, and fine of \$25 and costs.

Complaints in a Court of Equity may, naturally, contain matter which could not be allowed to appear upon pleadings at common law. The former sometimes exhibit circumstances around which there may be romance and feeling and through which relief may come. Perhaps, if the archives of the late Court of Chancery of the State of New York were searched, no more poetical language could be found than appears in connection with such a sunless object as a coal-yard. There was a dwelling-house in the city of New York and an adjoining lot which had been vacant but was now used for the deposit of "black diamonds." This was found to be obnoxious ; and, under a covenant against incumbrances "running with the land," an attempt was made to restrain the use of the ground for such a purpose. With this view, the complaining party humbly showed to his honor the chancellor that large quantities of volatile and offensive dust and smut from the coal rise in the air and are diffused by the wind into the premises of the neighboring inhabitants. And in spite of all their care, such coal-

dust and smut not only settles upon their walks and their grass-plats, but also on their fragrant plants and flowers, "beclouding the brightness and beauty which a beneficent Creator has given to make them pleasant to the eye and cheering to the heart of man." But what must be still more offensive to the ladies of the neighborhood, "this filthy coal-dust settles upon their doorsteps, thresholds and windows and enters into their dwellings and into their carpets, their cups, their kneading-troughs, their beds, their bosoms and their lungs ; discoloring their linen and their otherwise stainless raiment and robes of beauty and comfort ; defacing their furniture ; and blackening, besmearing and injuring every object of utility, of beauty and of taste." (Barrow v. Richard, 8 Paige's Ch. R., 351 ; S. C., 3 Edw. Vice-Chancellor's R., 96.)



CHAPTER III.

PROCRASTINATION OF COUNSEL.

BESIDES reasonable grounds for not trying suits as and when they may be called in their order on the calendar of the court, lawyers, from their own want of system or industry, are sometimes apt to cause that which is put to the law's delay.

Readiness and zeal are life and profit to a lawyer; and yet, there are some of the profession who, with a zealous nature developed when moved to go, cannot be coupled with Scott's lines on Thirstane and his ready lances :

“—Hence his high motto shines revealed,
'READY AYE READY' for the field.”

The members of a certain law firm are notorious in the profession for not being ready to try their causes when reached on the calendar. We will give their style as Messrs. A., B. and C. This laxness on their part was, as the sequel will show, well known to the bench. Judge George G. Barnard, calling the calendar, came to a case in which this law firm of A., B. and C. were attorneys and of counsel. A lad from their office responded by saying it could not be tried, for Mr. B. was unwell.

“What did you say?” asked the judge.

The youth repeated that Mr. B. was ill and, therefore, the action could not be tried.

“Oh, nonsense,” said his honor, “it is not so ; it can't be so : Mr. B. is not ill ; he was unwell the last time it was called :—it's Mr. C.'s turn to be ill this time.”

On another occasion and in connection with the same judge, a standing assistant of theirs—when one of their cases was called—

said, that Mr. A. was unwell and the trial would have to be postponed. The opposite counsel, having been before put off when he himself, as now, was ready to try, required an affidavit of the fact of sickness. This was made by the standing assistant. The judge then said the cause must go off, because this deposition had been made; although, for his own part "he chose to hold to his own belief as to the truth of it."

There was a case they had before a referee; and, adjournment followed adjournment. At last their opponent hoped, at a certain fixed meeting, that progress would be made; but Mr. C. came at the last moment and declared he had just received an imperative telegram from Washington and go there in an hour or so he must. The consequence was an adjournment—and away C. slipped. Directly he was out of the referee's office, the opposing counsel told Mr. Referee this was a mere ruse for delay. The latter was shocked and could not possibly think a professional gentleman would condescend to it. However, the next day the opposite advocate caught sight of C. still in New York—although the latter did not know he was observed. At the next meeting, this antagonist thus tackled C.:

"I say, C., I thought you had to go to Washington peremptorily when you got an adjournment the last time and yet I saw you in New York the following morning."

"Oh, yes," said C., "certainly I had; but, a most extraordinary thing! I started and rode as far as Trenton, when I got a dispatch which told me I need not go on; so I returned to New York the same evening."

Mr. George Wilson, of New York, was the embodiment of procrastination. He was never ready for trial—constantly asking to put off a cause. A standing plea was, he had been up all night nursing a sick child. On one occasion, before Judge John T. Irving, of the New York Common Pleas, he was nonplussed and his honor insisted that the cause then called and in which Wilson was engaged should be tried. Wilson went out of court for a moment and was told of the death of Mr. Francis Arden, who, although he had been a well-known lawyer, had not tried a cause

or been professionally active for twenty years. Wilson returned into court and drawing as long a face as his square features would allow, claimed silence, began by stating the great loss the bar had sustained by the death of Mr. Arden, eulogized the deceased and moved that the court adjourn. The mild and amiable judge echoed all Wilson had said in praise, and was evidently there stopping, when Wilson wistfully added :

“Then your honor will forthwith adjourn?”

“No, Mr. Wilson, not forthwith ; we will adjourn after your cause is tried.”

The same counsel fared better with his procrastination in the same court on another occasion, when he made like use of the death of a lawyer little known. On the presiding judge finishing a charge in a case which stood immediately before the one in which George Wilson was engaged but not ready, the latter rose, introduced the fact of the death of this unknown brother, praised him in strains of the most pathetic eloquence and concluded by moving an adjournment for the day in respect to his memory. Whether it was that Wilson's eloquence had really impressed the presiding judge or he yielded to a feeling of compassion for the gray-headed advocate, the motion was granted ; and Wilson, turning around to his brethren, exultingly, yet under his breath, murmured—

“Betwixt the stirrup and the ground,
Mercy I askt, mercy I found.”

By the way, this couplet is of considerable antiquity. It is given amongst epitaphs in Camden's Remains, 6th edition, 387, with the following introduction by that venerable antiquary, in which the harsh judgment of the world is quietly exposed :

“A gentleman, falling off his horse, brake his neck, which sudden hap gave occasion of much speech of his former life and some in this judging world judged the worst. In which respect a good friend made this good epitaph, remembering that of Saint Augustine, ‘*Misericordia Domini inter pontem et fontem*’ (Between bridge and stream, the Lord's mercy may beam) :

“ ‘ My friend, judge not me,
Thou seest I judge not thee;
Betwixt the stirrup and the ground,
Mercy I askt, mercy I found ! ’ ”

The last two lines (says a correspondent in *Notes and Queries*, vol. 6, p. 614, first series) are quoted by Johnson in his life by Boswell, where he charitably observes that we are “not to judge doctrinately of the state in which a man leaves this life ; he may in a moment have repented effectually and it is possible may have been accepted of God.”

The epitaph was probably often in Johnson’s mind, as he gives the lines in his Dictionary, as an example of the word *stirrup*.

Abraham Crist, who was lost by the burning of a steamboat on the Hudson River, used to tell of his once getting the better of Wilson. Crist had brought an action in which Wilson was retained for the defendant. The trial, from his opponent’s procrastinating disposition, had been repeatedly postponed. Crist was determined to bring the case on when it should next be called. At the opening of court on the day when it was on the calendar, he, assuming an air of concern, applied to Wilson to consent to the cause going over for the day, in consequence of the absence of a material witness. Such an application, it might be supposed, Wilson would have readily granted ; but no, the opportunity of driving his antagonist into a corner was not to be resisted. So, with many professions of regard for Mr. Crist and of his personal readiness to oblige, he stated that his client was in attendance with witnesses, ready for trial and he was obliged to insist on going on whenever the cause was called, ending by declaring he should strenuously oppose its being put off in case his adversary should make an attempt to do so. Crist heard all this with well-acted vexation. The cause was shortly afterwards called, when Wilson promptly answered “ ready ; ” and, to his chagrin, Crist made a like response. Wilson was fairly trapped—the cause was tried.

George Wilson was a remarkable man, capable of putting forth most powerful argument and high eloquence. There was a case in which he had received a large amount for a client and not having

promptly accounted, there was a reference to ascertain, by way of off-set, the value of his professional services, one part of which consisted in his argument before the Court for the Correction of Errors. Some leading lawyers, who had heard it, declared that his declamation and force were marvellous ; that one of his figures of speech was so graphic, vivid and powerful as even to bring some of the court to their feet.

He, however, was erratic. In a case before a New York jury he commenced in a charming strain and was prettily coming down to describe life and its enjoyments and then its ills—and while, as to its ills, he preliminarily touched on them tenderly, poetically and affectingly, he ended with—

“ But you know, gentlemen of the jury—

“ ‘ Great fleas have little fleas
Upon their backs to bite ’em,
And these, again, have lesser fleas,
And so, *ad infinitum.*’ ”

B——, of the firm of V——, H—— and B——, has always been considered a clever hand at getting off a cause from trial. There was a suit which he had managed to put off from circuit to circuit, on account of alleged absence of witness or prior engagement of counsel. At last his adversary was so far able to pin him as to get it stipulated that neither absence of witnesses nor any engagement of advocate should stop its being tried at a particular day in a certain term. When this time came, B——, holding a small slip from a newspaper in his hand, expressed the impossibility of his going on, from the fact that his client’s grandmother had died in the country—here he read an obituary notice—and the client, who he would want as a witness, had necessarily to attend the funeral.

The opposite counsel protested ; but, as it was truthfully pressed that the death of a grandmother was not one of the things embraced by the stipulation to try, the cause went off, amid any thing but blessings upon the spirit of this grandmother on the part of opposing counsel.

Some time afterwards B—— met the opposite counsel in the street and asked him whether he really believed that the slip from the newspaper had reference to his client's grandmother?

"Yes, of course he did."

B—— gave him to understand how, by accident and good fortune, he came across the fact of the death of an elderly lady bearing the surname of his client and he found it very convenient to make out of the obituary notice a grandmother for the defendant and sufficient to get the cause off once more.

All men appear to have, more or less, two natures. Daniel Webster was remarkable in this respect. He was grave as a senator should be in the senate house, but gay as a summer bird in outdoor pursuits. A gentleman was appointed minister to a foreign court while Webster was Secretary of State. The former had to go repeatedly to the latter for his credentials—indeed, it seemed as though he would never get them, Mr. Webster constantly putting him off, with his solemn manner, on the ground of having to attend to important affairs of state. At last, the session of Congress being over and Mr. Webster about to leave Washington, he apologized, urging the appointee to call on him at his home at Marshland, when he should certainly receive his papers. He went and there got what he required. Webster took him fishing and amused the gentleman through other light pursuits; and when he left he was delighted and surprised at the contrast of character between the statesman at Washington and the man of Marshland. A friend happened to ask our newly-appointed diplomat whether he had seen Webster.

"Seen him," was the response, "why there are two of them!"

Sidney Smith described Webster as a steam engine in trousers.

We have made free to bring Mr. Webster within this work on the different bars of the State of New York, because he argued in our courts and for a time had connection in business with lawyers and an office in the city of New York.

In the early settlement of the county of Chenango, a carriage-maker took a lad, who wished to learn a trade, about fifteen miles, to a lawyer, with a view to get his indentures of apprenticeship.

drawn. He went early and reached the place at what is now about early breakfast-time. The lawyer took instructions and promised to have the articles done by noon. The master and the boy adjourned to the tavern and spent the time quite pleasantly, drinking flip and eating hot cake. The master returned and found but little progress had been made. The lawyer was very busy and something of a bungler, and the master went away again and then took another mug of flip. So he kept calling and being put off and flipping until near night, when he grew impatient and said to the boy—

“Come, Horace, we may as well start for home, for your time will be out before he gets your indentures drawn.”

CHAPTER IV.

JURORS.

TRIAL by jury is supposed to be inscribed upon the balance attached to the scales of Justice; and lawyers might not like to see the spirit of codification, with its reckless brush, blotch it out. And yet, experience in court makes sure that the twelve apostles do not occupy the twelve jurors' seats. The power to try a civil cause before a judge or referee without a jury, is of the few good things in the New York Code of Practice. To write thus of the "few" good things coming out of Nazareth, may be thought heresy by one of the codifiers, who assured a brother lawyer soon after it was launched that in twenty years the New York Code would be considered the greatest effort of human genius. This impression was not general in the profession. The late David Graham, jr., a codifier, was attacked by an illness which ultimately terminated the existence of this agreeable and excellent common lawyer. An advocate met, in the Supreme Court room in New York, another of the code-makers and the following dialogue took place :

Advocate.—"Do you know how Mr. Graham is?"

Codifier.—"He is very ill—completely broken down. The code has ruined the health of all of us who were engaged upon it, the labor was so intense."

Advocate (dryly).—"I am not surprised, for it has made all the bar sick."

Although the code, from the time it touched water, pretended to be one of Practice, yet many an action which had been set afloat on the old well-known seas of common law and statute, was now tossed about without seeming landmark, beacon or port. For example, a young lawyer of the name of Higgins was vegetating

in the central part of the State, waiting professionally for something to turn up. He had begun practice about two years before by an action in a justice's court for fraud in a horse-trade and on trial recovered sixty dollars for the plaintiff. The cause was removed by defendant's attorney into the Common Pleas, by *certiorari*—a proceeding then much in vogue—where it was retried and where, by additional aid of counsel, the plaintiff recovered again. The defendant's attorney, an old hand named Trumbull, but whose name, in consequence of his tough fighting qualities, was generally contracted to "Old Bull," brought an appeal to the Supreme Court, giving security and staying proceedings. The case remained in the Supreme Court two years in a comatose state, when Higgins, thinking it about time he had some costs and his client some damages other than those which result from delay, made a motion in the latter court for a dismissal of the appeal for want of prosecution. The court, examining the papers and the multifarious and anomalous proceedings which had been had, decided that the motion could not be entertained, as the suit was not in that court. Higgins, nothing daunted, thinking such mistake could not be committed twice, then moved the Common Pleas; but that court, after due deliberation, decided the motion could not be granted there, as the case had gone beyond that court. Here was a dilemma with two horns plainly visible, as it seemed obvious this horse case had gone beyond the Common Pleas, but had not yet reached the Supreme Court. Higgins knew of no intermediate state; and so, turning to his register, where this solitary case was entered and where he had given, from time to time, a minute history of its details, even to the writing of a letter and payment of a postage, he made a final entry at the date of the last motion: "Here I lost track of this whole thing!"

Perhaps the Code of Practice of the State of New York might have had another good thing in it, namely, provision that a certain majority of a petit jury should be allowed to give a verdict; for, until all jurymen are, as lawyers studiously call them, "intelligent," unanimity through twelve different minds seems like getting concentration of rays through twelve jostling prisms. The ques-

tion of allowing a majority to govern a verdict has been started in this country ; and elsewhere, as well, whether a grand jury should not be entirely ignored.

This necessity of twelve jurors agreeing on a verdict, sometimes places eleven rational and conscientious men at the mercy of some obstinate, strong-stomached creature. As a practical illustration, let us give the result of a horse-cause in the north of England, which took place about 1839. The case was a clear one in favor of the plaintiff ; but the jury, after having been locked up all night and to a late hour on the day following, gave, to the astonishment of everybody except those in the secret, a verdict for the defendant. The circumstance was a good deal talked of at the time and it appeared from the statements made in conversation by some of the jurors that the result had been produced in the following manner. When the jury had retired to their room, it was immediately ascertained that eleven were for the plaintiff and one for the defendant. All manner of arguments were addressed to the understanding and conscience of the solitary dissentient, but utterly in vain. Like Major Bellenden, in "Old Mortality," he protested that, sooner than abandon his position, he would eat up his boots ; and, showing a pocket full of horse-beans, he declared he was provisioned for two or three days. The night came, but he remained inexorable.

Supperless the eleven sat, while *the* jurymen settled himself in a corner, munched away at his horse-beans and looked out with infinite philosophy upon the turmoil around him. The morning, the noon and the second evening drew on, the patience and strength of the eleven were exhausted, but the horse-beans were not ; and at length the twelve made their appearance in court with a verdict which every man among them knew to be a false one. (7 *London Law Magazine*, 49.)

With regard to the impression we have given of the value of a trial before a competent judge who shall have a jury in his brain and not as a team, we may here add that the editor of Finch's Reports was somewhat of our way of thinking, for he attempts to prove how a single judge—say a chancellor—is of more value

than twelve "good men and true." "'Tis true," says he, "many decrees of lord chancellors have been reversed upon appeals to a superior court, but never for any reason like that for which a verdict was set aside which was given by a north country jury by flipping up a sixpence—if cross, for the plaintiff; if pile, for the defendant."

Judge E. Darwin Smith, sitting in the Court of Appeals, made sensible remarks on jurors and brought them down to their right level.

"It is not the jury," his honor said, "but the courts which administer justice. The duty and responsibility of seeing that equal and impartial justice is meted out to all men, devolves, under the Constitution, by the common law, upon the judges of the courts. Juries are mere assistants of the courts, whose province it is to aid them in the decision of disputed questions of fact." "Its value (jury trial) chiefly depends upon the fact that the trials are had under the direction and supervision of educated and experienced judges, who have devoted a lifetime to the study of the law and to the practical administration of public justice. Jurors, on the contrary, are selected from the body of the people for a single occasion and, as a general rule, are unfamiliar with the rules of evidence and with the principles of law and the processes of legal investigation." (*Ernst v. Hudson River Railroad Company*, 24 *How. Pr. R.*, 105.)

There was a time in the State of New York when jurors were as difficult to be caught and brought into court as to hook some kind of fish and bring them to market. A magazine says that about twenty-five years ago, in a thinly-populated part of the State, the inhabitants were notoriously disinclined to the pleasures of litigation. The court up there had been forced to adjourn many times, from day to day, because the sheriff as often came and reported an incomplete panel. Finally, things came to a crisis. The judge fixed a day beyond which no further forbearance could be exercised. When that day arrived, the enthusiastic sheriff rushed into the court-room and exclaimed, "It's all right, your honor: we'll have the jury by twelve o'clock. I've got eleven of them

locked up in a barn and we are running the twelfth with dogs."

The impanneling a sufficient and competent jury may seem an easy thing, but judges shake their heads and sheriffs growl at the idea.

At the New York Court of Oyer and Terminer for April, 1861, incidents occurred which reminded one of the parable of a certain man who made a great supper. There was a panel of one hundred jurors summoned, but only twenty-two answered to their names; and of these eighteen presented excuses for not serving. These excuses were of a varied character and represented every form of excuse. Number one had the rheumatism. Number two, bad cold. As to Number three, his wife, poor thing, was sick. Numbers four and five were suffering from neuralgia. Number six had served on the grand jury the month before. Number seven was taking medicine which unfitted him for jury duty. Number eight (he must have been a poet) had been overworked with mental labor. Number nine had served in the Superior Court. As to Numbers ten and eleven, it would greatly inconvenience their business (probably, shad fishing). Number twelve had been summoned three times during the last year and had served once. Number thirteen could not possibly be on a jury on account of (as he put it) "urgent business." Number fourteen was very ill indeed! Number fifteen of course could not stay in a court of law, being in the court of Hymen and going to be married. While Number sixteen, too happy man, had that morning been pronounced a father. While Numbers seventeen and eighteen, by proxy, informed the court they were under the physician's hand and could not come under the operations of a court.

The court did not, literally, order its servant, the sheriff, to "go out quickly into the streets and lanes of the city," but it had to direct an extra panel of one hundred jurors.

The difficulty of empanelling a jury in a high criminal case in New York, was never more apparent than in the case of Polly Bodine, who was indicted for murder in 1847. The decisions on the books showed that a man was incompetent to serve as a juror in a case in which his opinion of the merits of the controversy had

been formed from his own knowledge of the facts in issue, although he was wholly free from all favor or malice towards either of the parties ; also, where he is incompetent to serve as a juror in a case in which he has formed or expressed an opinion of the merits of the controversy founded on information derived from the newspapers or any other source ; also, a man called as a juror may be interrogated as to the fact of his having formed or expressed an opinion of the merits of the controversy and his confession that he had formed or expressed such opinion was of itself sufficient evidence of his incompetency. These were innovations on the common law. The court, Judge Edmonds presiding, was two weeks and a half laboriously engaged in an attempt to empanel a jury ; between five and six thousand had been summoned and called as talesmen and upwards of four thousand of those personally examined by the court either as to their fitness for jurors or in relation to their excuses. It resulted in a dismissal of the few jurors empanelled and of an abandonment of a trial within the county of New York. It is reported that many who were summoned in Bodine's case had the precaution, before being called, to remark to a bystander : " I think Polly Bodine ought to be hanged," and then, when his name was announced, he truthfully confessed that he had expressed an opinion—and was excused of course. " Had the prisoner," observes a writer on this trial in the Boston Law Reporter, " the good fortune to have had twelve friends among the multitude who attended, they would have been strained out of the four thousand examined and, by a verdict of not guilty, would have illustrated the fairness of the trial by jury as secured by the ingenuity of the Supreme Court of the State of New York."

By way of parenthesis : In the olden time of England, men who were accused had more confidence in those who were called as jurors than our prisoners of the present day appear to have. When Sir Walter Raleigh was asked, whether he would take exceptions to any of the jurors ? " It is my firm opinion," responded Raleigh, " that they are all Christians and honest gentlemen : I object against none."

Polly Bodine was indicted for the double murder of her brother's

wife and child. This brother, George W. Houseman, resided on Staten Island and while he was from home, his dwelling was burned at night. His wife and infant child were found among the ruins, their bodies bearing marks of violence, showing they had been murdered.

The accused was also indicted for arson. In the summer of 1844, she was tried in Richmond County, on the indictment for the murder of Mrs. Emeline Houseman. The trial resulted in the jury being discharged without rendering a verdict. Eleven of them were for conviction, but one would not come into either an acquittal or a conviction. The prisoner was defended by David Graham, junior, and Clinton DeWitt. After the trial was over and the jury had been discharged, Mr. DeWitt asked the twelfth juror, why, on what ground was it he refused to unite with the eleven? The man replied that this was a case of circumstantial evidence and he never would convict on such kind of testimony, unless it was in the fourth degree. DeWitt then said :

“What do you mean by circumstantial evidence in the fourth degree?”

“Why, four eye-witnesses who swear they saw the act committed.”

An attempt was afterward made to empanel a jury in the County of Richmond, but without success ; whereupon, on motion of the district attorney, the case was removed to New York (1 *Hill's Reports*, 147). There, after all the trouble had occurred of empanelling a jury to which we have recurred, she was convicted. A new trial, however, was granted by the Supreme Court (1 *Denio's Reports*, 283). It took place at Newburgh, occupied two weeks and resulted in an acquittal. She was defended by David Graham, Ambrose L. Jordan and John W. Brown, afterwards a justice of the Supreme Court. The prosecution was conducted by James R. Whiting and Lott C. Clark, District Attorney of Richmond County.

In the progress of the case, the counsel for the defence had indulged in abuse of the City of New York. They spoke of corruptions, its iniquities ; while, at the same time, they took especial

pains to set forth the great purity of the country. They had, come, they said, to the peaceful shores of the Hudson to get justice for their client, which was denied her in the wicked city of New York. Mr. Whiting, in his reply, resented the abuse which New York lawyers had cast upon the city where they themselves resided. "Why is it," continued Whiting, "that the city of New York is such a vile place, when we find that the counsel, Mr. Jordan, had left his practice on 'the peaceful shores of the Hudson' and taken up his abode there?" "Oh, sir," interrupted Mr. Brown, "Mr. Jordan went to New York as a missionary."

At the time of this trial, Polly Bodine was about thirty-six years of age. She possessed a graceful figure and had handsome features; and prided herself on her good looks—while there were singular touches of vanity in her disposition. After the murder, Barnum, of museum notoriety, procured and exhibited a wax figure, which he claimed was an accurate likeness of Polly; but it really represented an hideous old woman of sixty. She had somehow got a sight of this figure and it was a great source of mortification to her vanity and pride. This wax work continued to worry her mind much more than the life-peril she was in. And before her last trial, she had importuned her counsel to bring an action of libel against Barnum; but they told her it was idle to think of such a proceeding while she was so soon to be tried for her life—still, she was not easily pacified. As may be imagined, the last day of her last trial was an impressive one. The counsel closed. The court very solemnly charged the jury and they retired. Amid the after silence, the court bell rang a notice that the jury had agreed. In a few minutes the court-room was quietly filled. The prisoner, with pallid countenance and no little agitation of manner, took her seat by the side of her counsel. The clerk of the court asked the jury, if they had agreed on their verdict: "We have." The prisoner was commanded to rise and look on the jury and the jury were directed to look on the prisoner.

"How say you, gentlemen of the jury, do you find the prisoner guilty or not guilty?"

"Not guilty."

The prisoner sank down, tears streaming ; but very soon recovering herself, she leant her head over to one of her counsel and, with great éagerness, asked : " Can't I now sue Barnum for libel ! "

The author is assured that Polly Bodine is at this time a ragged street-beggar in the City of New York.

We have often thought that jurors are the most patient of creatures. Cut off for hours and often days from their business, families, familiar walks and haunts and friends, they sit in a row in court, as silent, passive, solemn and subdued as owls upon perches in a menagerie. Still, they can get restless. Thus, in the western part of the State of New York, a farmer, who had been in the Legislature, was serving on a jury. At a late hour, the presiding judge and counsel then engaged in the case were conferring as to an adjournment ; and our particular juror, who had been out all the night before in another cause, expressed a hope there would be an adjournment. However, his honor ultimately intimated that the cause should proceed. At which this juryman rose and said :

" I move, your honor, that we now adjourn : according to parliamentary usage a motion to adjourn is always in order."

The judge said he did not run his court by Jefferson's Manual—and declined to put the motion. It was not a case for an " appeal from the speaker's decision."

Judge Hand, of the Supreme Court, had delivered an elaborate charge to a grand jury, going over all possible matters which could come before the latter and he, evidently, had taken great pains and intended that what he had uttered should be borne in mind by all present. After this, a man came forward to excuse himself from jury-duty, holding his hand up to his ear.

" What is your excuse ?" said the judge.

" I am very deaf, your honor."

" Did you not hear my charge ?" asked his honor.

" Well, yes, I did : but I assure your honor I could not make either head or tail of it."

Judge Oakley was presiding at a trial term in the New York Superior Court, and, on a call of the jurors, one desired to be excused ; but, though very pertinacious, his honor did not seem

inclined to let him off. The juror, then, in an undertone, said there was a reason which would make it most unlikely for the other jurors and himself to put their heads together or come sufficiently in contact to agree to any verdict.

"Why, sir?" asked the judge.

The juror, with half his face in tragedy and half in comedy, like Garrick, replied: "The fact is, your honor, I have got the —— (Scotch fiddle).

Judge—"Scratch him, clerk."

Jurors, men drawn at hazard from the community, show variant and, consequently, the effect of their movements will be different. Grand jurors, however, can never do permanent harm, for the grain they measure has to be winnowed again by a petit jury; but the latter "intelligent jury," men "in the possession of their natural faculties," to use the words of our statute, may amuse and yet vex from ignorance or peculiarity, while, with obstinacy or something worse among them, wrong to justice and to her suitors may come.

With this short preamble, we have a pleasant thing or two to write about grand jurors and several remarkable matters illustrative of common, uncommon jurors.

A district attorney in one of the southern tier of counties procured some new blank forms of indictments. Formerly such forms had inserted the name in full of each member of the grand jury, but it being considered by courts generally to be unnecessary, our district attorney had dispensed with it. He had, however, got a number of indictments drawn up in the old form and gave them to his clerk to have inserted the names of the grand jurors; and, by mistake, he handed over, with others, an indictment in the new form against Rosetta C——, for keeping a disreputable house. In all these printed forms there is blank space enough to insert as many defendants as there may chance to be. His clerk proceeded with his duty, and on coming to the indictment against Rosetta C——, filled in the names "of each and every" of the grand jurors, thus forming a complete indictment against the whole panel jointly with Rosetta for the offence named. This indictment, with others, went

before the grand jury, and was returned with this endorsement : " I certify the within to be a true bill. Dated, etc. W. T. R——, foreman." The case went over to the next term, when Rosetta was brought up for trial. Sam Holmes, acting as counsel for the accused, on looking at the indictment, objected to any proceeding until the other defendants were arraigned and pleaded.

District Attorney.—" What other defendants ?"

And the court asked Mr. Holmes to explain.

Holmes.—If the court please, this is an indictment against Rosetta C——, W. T. R——, S. T. A——, and others (naming all the grand jurors) for keeping a disreputable house. Mr. S. T. A—— is here in court and can be arraigned at once and I will put in a plea of not guilty for him. Mr. W. T. R—— is also here, but on his behalf I have nothing to say, as he has, over his own signature, said *guilty*, and certified the charge to be true. As to the other parties implicated, they can be brought in as soon as the district attorney can issue bench warrants and then we shall be ready to proceed with the trial."

The district attorney asked to look at the indictment ; took it, thrust it into his pocket—and exclaimed, " Quashed."

Judge Edmonds, of the Supreme Court, was holding court in a country village. He had selected as foreman of the grand jury a man whom the district attorney afterwards represented as very unfit, being notoriously intolerant—suggesting, also, that he would indict every thing in the county. Sure enough, the trouble soon began. Indictments came in thick and fast and the people were very much stirred up. Among other things, the judge was told he was about indicting a billiard table which a few gentlemen in the village had bought and put into the care of a man, who was allowed to charge a small sum each game to pay expenses. So, to put a stop to it, if the judge could, his honor, one evening, after he had adjourned his court, took the sheriff, the clerk of the court and the district attorney with him to the billiard-room and played two or three games. It was soon noised about the village what the judge was doing and before the games were ended the room was crowded with spectators.

The next morning, before his honor was out of bed, this foreman called on him in great excitement and told him he had heard he had been playing billiards!

"Yes, certainly."

"But, did your honor know we were about indicting the table?"

"Yes; and therefore it was I played: to save you from doing a foolish thing and the country and the people from the annoyance of an unavailing trial."

"But, is not playing billiards unlawful?"

"No, not unless there is betting at it; but where it is conducted as this is, with no hazard except the mere expense of keeping the table and no possible gain to the winner, it is no more unlawful than pitching quoits or playing ball. It is, like them, healthy exercise only. I sit here, in court, from ten to twelve hours a day and the only exercise I have been able to take has been the mile or two I walked last night around that table. Did you ever play at it?"

"I! no, never!"

"Then you know nothing about it and you would indict because it is called a game. Learn, if not by experience, by testimony, if there is any thing wrong about it beyond knocking the balls about."

"O, well," was the grand juror's reply, "if that is the case, we had better not do any thing more about it."

And there that matter ended.

Judge Thompson was sitting in a cause in the Circuit Court of the United States for the second circuit, wherein he charged the jury in favor of the plaintiff. Eleven of them soon came into the views and conclusion of the court, but the twelfth man was obstinate and could not, by any of his fellows, be brought to reason. The court waited and the counsel who had been engaged in the case—we believe it was Justice Nelson, now of the United States Supreme Court—becoming restless from wanting to leave, asked the officer who had the jury in charge, where was the difficulty?

He answered they could not complete a verdict, because of one obstinate man, who declared "he would not agree to a verdict for the plaintiff until Gabriel blowed his trumpet."

At last, the judge called in the officer and got from him some-

what the same story. His honor had the jury again in court, when their foreman, others joining with him, complained how one of their body was unreasonably obstinate. Judge Thompson severely lectured the man and sent the jury back, while the judge himself, leaving the court room for a moment, came side by side with the jury as they were filing into their room. As this movement was taking place, the recreant juror sided up to the judge and exclaimed, most energetically :

"Here, judge, I said in the jury-room I would not find a verdict until Gabriel blew his trumpet; now, I tell you, I won't find a verdict in his favor even when Gabriel has blown his trumpet."

Judge William Kent was presiding in Circuit Court and there was a great scarcity of jurors, as well, indeed, as of talesmen. His honor, determining not to adjourn, pressed several lawyers who were in attendance into the jury-box as talesmen, much against their wish. A simple case, on a note, in which there was really no defence, was to be passed upon and should not have occupied any time; but the lawyers thus forced on the jury, one after the other put question on question to the witnesses and managed to make peculiar suggestions and intimate legal doubts, occupying the court several hours. The judge vowed he would never again put lawyers on as talesmen.

Conrad v. Williams, was a case of breach of marriage-promise, brought in Tompkins county, about the year 1846. On the first trial, there was a verdict in favor of plaintiff of \$8,000. On the second, the jury failed to agree. On a third trial, before Judge Parker, at Ithaca, five days were consumed. The cause was given to the jury on Friday evening and about 10 o'clock they reported their inability to agree. His honor assured them the circumstance was unfortunate; he regretted they had passed so uncomfortable a night; he would endeavor to have them more comfortably provided for in future; he would remain in town until Monday morning to receive their verdict, if they should be able by that time to agree: if not, *he had a circuit to hold at Albany, after which and probably in about two weeks, he would again attend to receive their verdict*, should they be prepared to render it; and in the mean-

time, the sheriff would take all proper care for their accommodation and comfort ! This had a very prompt, controlling influence ; for, in another brief half-hour's deliberation they had agreed on their verdict, which was rendered for the defendant.

On the famous trial of the seven bishops, in the year 1688, when the bigot, James II., had a fitting tool in the bloody Judge Jeffreys, the jury were locked up all night without either fire or candle. They could not agree in a verdict, owing to the obstinacy of one Arnold, the king's brewer. There is still to be seen the following curious letter on the treatment of the jury :

"John Ince to the Archbishop of Canterbury.

"June 30, 1688.

"MAY IT PLEASE YOUR GRACE—We have watched the jury carefully all night, attending without the door on the stair-head. They have, by order, been kept all night without fire or candle, save only some basins of water and towels this morning about four. The officers and our servants, and others hired by us to watch the officers, have and shall constantly attend, but must be supplied with fresh men to relieve our guard, if need be. I am informed by my servant and Mr. Granges, that about midnight they were very loud one among another, and that the like happened about three this morning ; which makes me collect they are not yet agreed. They beg for a candle to light their pipes, but are denied. In case a verdict pass for us, which God grant in his own best time, the present consideration will be how the jury shall be treated. The course is, usually, each man so many guineas, and a common dinner for them all. The quantum is at your Grace's and my lord's desire. But it seems to my poor understanding, that the dinner might be spared, lest our watchful enemies should interpret it against us. It may be ordered thus : To each man — guineas for his trouble, and each man a guinea over for his own desire.

"My Lord, your Grace's most humble servant,

JOHN INCE."

"N. B. There must be 150 or 200 guineas provided."

It would seem almost a pity, with regard to those juries who have obstinate men among them and lose time and suitors' rights, that they are not dealt with according to a custom which prevailed in one of the northern counties of England. When the presiding judicial officer had summed up, he said : " Now, gentlemen, lay your heads together and consider your verdict ;" at which, down went every head in the box and an official approached armed with a long wand. If any unlucky juror inadvertently raised his head, down came the stick upon his pate ; and this way they continued until the truth was *struck out*, in their *veredictum* ; and so, there was expedition of business. (*Notes and Queries, Second Series, 265.*)

An Irish sheriff, whose charge it was to carry an obstinate jury after the judges, was so indignant at the trouble imposed upon himself by their pertinacity that he mounted the refractory jurors upon twelve jackasses and thus marshalled them in cavalcade, with a delighted mob at their heels, to the borders of his county.

There was a late case, *Hitchfield v. Anthony*, tried in the Supreme Court Circuit in New York. It involved an alleged illegal seizure. The jury were locked up all night, after a trial of three days. It appeared, they stood six to six. One of the jury amused himself with doggerel rhyme, to the extent of four stanzas of eight lines. On the completion of each stanza the twelve good and lawful men would come to a solemn vote and every time they were a double six. The court, in the morning, in some way or other got possession of the lines. We give one stanza :

" Oh, when I make my little pile
And put it safely by,
I'll spend my days and nights in court
And all the causes try.
I'll disagree in every case ;
Put parties in a fix.
Come boys, let's take another vote
And throw the 'double six.' "

The effect of the poetry was said to be such on the court that the jury was speedily thereafter discharged.

It may well be supposed that judges, when they have a jury to hear and decide, differ in their course ; some leaving them to come to a verdict through their own original hearing and impressions of witnesses, while others go through all which each witness has said and weigh and compare and point out discrepancies. The latter, although done by judges through indomitable ideas of honest dealing with a case, is apt to make juries flutter around and know not where to rest. We make these observations in connection with the following :

Hiram P. Hastings was counsel in a cause before Judge Uls-hoeffer and a jury in the New York Common Pleas. His honor's charge did not satisfy Hastings. It seemed to him a backing and a filling and yet carrying no definite matter. The jury seemed baffled as to one side or the other and could not agree. Immediately on their being discharged and before they had quitted their places, Hastings strided across the court to and conversed with them. The judge beckoned to Hastings and asked him how they stood. "Just like your honor's opinion, five for one and seven for the other."

And now, to the absurdities and peculiarities of jurors.

In an action in New York, involving from eighty to one hundred thousand dollars and after the judge had charged the jury, one of the latter, having a high bald head, calm blue eyes and on whose sense of justice a counsel who had the merits with him relied, arose and said :

"I believe I understand all the rules which have been laid down, but there are two terms of law, used a good deal on this trial, that I should like to know the meaning of."

"Very well, sir," responded the judge, "to what terms of law do you allude?"

"Well," said our highly intelligent juror, "the words I mean are, plaintiff and defendant."

No great time ago a judge of the Superior Court of New York observed, with some interest, a juror who was always in attendance and, so, managed to sit in almost every case. Thus serving, he seemed to our judge to be very attentive. And he appeared

so intelligent in face, neat in dress and correct in manner that the judge, who had got fretted and vexed at the dullness and even stupidity of the men who were generally on the panel, made it a point more particularly to address himself to this model jurymen, feeling that a righteous verdict might thereby come. After some days of this kind and during a pause in the proceedings, his honor beckoned to our paragon and expressed to him, somewhat elaborately, his exceeding gratification at his attention and evident intelligence in the midst of such illiterate creatures as had generally composed the juries of the court. On his honor's ending, the jurymen exclaimed: "Me no understand English, joodge."

Recommendations to mercy seem to be natural, but in 1856, a jury in the city of New York found a prisoner guilty, with a recommendation that he should be punished with the utmost rigor of the law.

There was a case in the New York Superior Court where a verdict for \$4,000 was set aside, Chief-Justice Jones giving the decision from the fact of a foreigner being on the jury and not understanding the English language. The incompetency of the jurymen made it a mis-trial.

A man in one of the western counties got the *soubriquet* of judge from the "intelligence" he displayed when on a jury where damages were claimed in consequence of a defendant's swine making an inroad upon a potato-patch. He intimated to the court there was a point on which he, as one of the jurors, wished for a little information: "I'd like to ask that ar witness jest one question, and that's a question right unto the p'int: was them ar potatoes rooted up afore they were planted or arterwards?"

Mr. James W. Gerard of the New York bar, was in a case where his client, plaintiff, sat beside him, holding a gold-headed cane. The merits were with this plaintiff; but the jury went out and remained out. Eleven of them were in favor of the plaintiff, but the remaining man would not listen to reason, nor did he seem at all inclined to give any ground for holding out. They so remained for a great length of time. At last this one was

induced to say why he would not agree with the others : " I never will find a verdict in favor of a man who carries a gold-headed cane." This still checked the others ; and one of the eleven even seemed to begin to waver and appear to give into the propriety of the principle which was involved in this ostentatious exhibition of a gold-headed cane ; but he, significantly, called the obstinate one aside and told him how he himself, while they were all in court, had particularly observed and been offended at this gold-headed cane and experienced a similar feeling of repugnance against the plaintiff ; that this had caused him to pay particular attention to the cane and he had ascertained as a fact that it was not gold, only pinchbeck, mere brass metal. The obstinate jurymen took in this assurance and agreed with his fellows in finding a verdict for the plaintiff.

In another case, Gerard had just gained a verdict from a stupid jury. In leaving court, he said, rejoicingly : " Ah, you may talk of a special jury and a jury of respectable and intelligent merchants, but give me a jury of your foreign corner grocers ; oh, ye gods!"—here, doubling his fists and throwing out his arms, dumb-bells fashion—" oh, ye gods ! what magnificent material to work upon !"

There was a time when horse-stealing was punishable by death in the State of New York. A jury trying such a case and unwilling to have a man hung for so small an offence, returned a verdict of *manslaughter*.

This is about equal to an English jury, who, having before them a prisoner charged with burglary and being unwilling to convict him capitally, as no personal violence occurred, gave the safe verdict, " Guilty of getting out of the window."

We must be pardoned for tacking to this the finding of a Clare (Irish) jury, in a case of felonious gallantry. They acquitted the prisoner of the capital charge, but found him guilty of " a great undaceny."

Judge Conkling, United States District Judge, was holding court at Albany. He, one day, discharged the jury at noon, telling them he was *physically* incapable of holding court any longer.

A juryman, on being asked by an acquaintance why the judge had discharged him at so early an hour, responded, that his honor had told the jury he had been taking physic that morning and could not hold court.

Mr. Francis Byrne, of the New York bar, had a client who was once in better days as a merchant. He was now to stand trial on a charge of having passed counterfeit notes. On the call of the jury, one appeared who looked unexceptionable; but the client insisted on his being challenged peremptorily. This was done. During a recess in the trial, the presiding recorder, always showing himself courteously and displaying kind feeling, beckoned Mr. Byrne to him and observed how he had made a mistake in challenging the juror, for he was a most conscientious man and never gave into a conviction unless in clear case of guilt. When Byrne had got back to the accused, the latter was curious to know what had occurred between him and the presiding judge.

On being told, he exclaimed to his counsel, "I don't want a conscientious man on my jury."

There was a case in the Supreme Court of the State of New York—a slander suit—where the jury, not being able to agree, left it to lot whether the verdict should be for the plaintiffs or defendants, by placing ballots in a hat, some marked *prize* and others being blank, to be drawn out by the jurors; and if more prizes than blanks were thus drawn out of the hat, it was agreed the verdict should be for the plaintiffs; otherwise, for the defendants. The verdict which they found was set aside, as the result of a lottery. (*Mitchel v. Ehle*, 10 *Wendell's Reports*, 595.)

In a Court of Oyer and Terminer at New York, a man named William Harrison was called as a juror in the case of Charles Jager, charged with the murder of John Moran. Counsel for the prisoner, after finding out that the juror was an undertaker, said he should challenge him peremptorily, because of his occupation, which had too great a familiarity with death. It is in print that this juror was rejected.

The small remuneration which witnesses get was never more apparent than in the Forrest divorce case. They sat thirty-three

days. After the verdict had been rendered, the presiding justice, Oakley, cold and unruffled as an inland lake, said: "Gentlemen, the next thing in order is to pay the jury a shilling each." [Laughter.]

Mr. A. Oakey Hall, while acting as District Attorney in the General Sessions of New York, against Charles B. Huntington for forgery, used this neat figure in reference to and in addressing the jury: "And although strangers may sneer at this city—which we proudly call a metropolis—and designate it the modern Sodom and Gomorrah, if it is ever to be saved, I believe it will be because there may be found in it twelve righteous men and they will be those who sit from day to day in the jury-box of the criminal courts."

At a term of the Greene County Court, held at Catskill, in the year 1854, when the cholera was prevalent, the presiding judge received the following from one of an empannelled jury :

"ONERABLE JUDGE B——Y, SIR :—

"Oure lot is caste in A Dismel plase seronded By danger ande colery we want our Super.

"A JUORMAN."



CHAPTER V.

WITNESSES.

WITNESSES are "kittle cattle." This arises from fallacies or lapse of memory ; intoxicated excitement ; seeing without observing ; knowing of a part and imagining the whole ; religious prejudice ; political hatred or divergence from literal truth. And then comes ignorance, which—in a witness—can never be bliss to the party who calls him ; and yet, how often are important rights at the risk of it !

Still, although witnesses may be difficult to deal with, the profession must, perhaps laughably, admit there is much truth in the following lamentation which has found its way into public print :

"Of all unfortunate people in this world, none are more entitled to sympathy and commiseration than those whom circumstances oblige to appear upon the witness-stand in court. You are called to the stand and place your hand upon a copy of the Scriptures in sheepskin binding, with a cross on one side and none on the other, to accommodate either variety of the Christian faith. You are then arraigned before two legal gentlemen, one of whom smiles at you blandly, because you are on his side, the other eyeing you savagely, for the opposite reason. The gentleman who smiles proceeds to pump you of all you know ; and having squeezed all he wants out of you, hands you over to the other, who proceeds to show you that you are entirely mistaken in all your suppositions ; that you never saw any thing you have sworn to ; that you never saw the defendant in your life ; in short, that you have committed direct perjury. He wants to know if you have ever been in State prison, and takes your denial with the air of a man who thinks you ought to have been there, asking all the questions of you over again in different ways ; and tells you with an awe

inspiring severity, to be careful what you say. He wants to know if he understood you to say so and so ; and also wants to know whether you meant something else. Having bullied and scared you out of your wits and convicted you in the eyes of the jury of prevarication, he lets you go. By-and-by, everybody you have fallen out with is put on the stand to swear that you are the biggest scoundrel they ever knew, and not to be believed under oath. Then the opposing counsel, in summing up, paints your moral photograph to the jury, as a character fit to be handed down to time as the type of infamy—as a man who had conspired against innocence and virtue and stood convicted of the attempt. The judge, in his charge, tells the jury, if they believe your testimony, &c., &c., indicating that there is even a judicial doubt of your veracity ; and you go home to your wife and family, neighbors and acquaintance a suspected man, all because of your accidental presence on an unfortunate occasion.”

Now for the vagaries of witnesses.

Judge Gray was holding a circuit court at Norwich, in Chenango county, and had a somewhat fretful desire to dispatch the business. Among the later causes was one brought by an elderly Irishman, for recovery on a trunk lost between Norwich and Binghamton.

The old man took the stand as a witness ; and the judge interrogated him as to the contents of the trunk.

“ Now, sir,” said the judge, abruptly, “ what was in the trunk ?”

“ Well,” replied he, “ there were some clothes and some holy pictures.”

“ Holy pictures ! holy pictures !” exclaimed the judge. “ What do you mean by holy pictures ?”

“ Well, sir, there was a picture of Father Mathew, who introduced temperance into Ireland : perhaps your Honor’s heard o’ him ?”

“ Yes, yes ; go on !”

“ And then there was a picture of the blessed St. Patrick, who banished snakes from Ireland : perhaps your Honor’s heard o’ him ?”

"Yes, yes; what else?"

"Well, then," said the old man, fixing his eyes on the judge, "there was a picture of our blessed Lord, who came on earth to save men from their sins: perhaps your Honor's heerd o' him?"

We have a statute which authorizes Courts of Oyer and Terminer, or of General Sessions, to make an allowance out of the County Treasury to any witness who is too poor to pay the expenses of attending a trial to give his evidence. And the practice is for the boards of supervisors annually to cause a contingent fund to be raised by taxation to meet the same and other charges. Judge Edmonds was holding court in one of the interior counties of the State, when a poor boy made an application for such an allowance; and the judge granted him an order for two dollars and fifty cents. The county judge, who was on the bench with him, remarked that the boy would have "to stand a shave."

"Stand a shave!" exclaimed Judge Edmonds. "What do you mean by that?"

"Why," was the reply, "our board of supervisors last year, in their desire to court popularity, by lessening the taxes, omitted to raise any contingent fund, and this allowance cannot be paid until the taxes of next year are collected, and he cannot get the money without selling the order at a discount." Judge Edmonds immediately spoke to the clerk who was making out the order.

"Mr. Clerk, make that order three dollars and a half. The county can 'stand a shave' better than the boy."

Among the several efforts which our Legislature have, from time to time, made to suppress the use of ardent spirits, was a law submitting it to the people of each town to determine, at an election to be held for the purpose, whether any license to sell liquor should be granted in the town—it being unlawful to sell without license.

Judge Edmonds was holding courts in the country about the time these elections were going on. The excitement was great on both sides. The usual toppers seemed to drink harder than ever, as if in spite, and there never before was so much intoxication.

In a trial before his honor, one of the witnesses was particularly drunk, but as good-natured as possible. His testimony ran wild,

so that no dependence could be placed on it. The judge reprimanded him several times. He seemed very sorry; promised he would not do so again, yet would soon fall back into his trick of rambling. The judge finally ordered him to leave the witness-stand; sit down on one of the back benches, where he could have an eye on him and not to leave the court-room until he got sober.

The court, however, adjourned for the day before this witness recovered. After tea, as Judge Edmonds was sitting on the piazza of the hotel, in company with several of the lawyers, this fellow came across the street towards them, apparently drunker than ever. He did not notice the judge, but made some report to one of the lawyers about the service of process which had been put in his hands. After he had got through, the judge spoke to him.

In a good-natured way, he said, "Hello, judge, is that you?"

"Yes; and I am sorry to see so clever a fellow as you seem to be throw yourself away in this manner. What has caused it?"

"Well, I don't know, judge. I'm about with the boys a good deal and we spree it pretty often. See here! I was constable five or six years; then I was deputy-sheriff three years; then I was high-sheriff three years; and then I was constable again—and so I am about a good deal among the boys. Look here, judge, down there where I live, at Cold Spring, I am the universal horse-doctor. If anybody's horse is sick, he fetches him to me. One day a fellow come and said his horse was sick. I asked him what was the matter with his horse. He said he wouldn't drink and he wanted to know what he should do to make him drink. I told him to elect him a constable, by thunder! and he would take to drinking fast enough."

We can very well fit in here how a man could not bear prosperity. This was thus shown lately in a police court in New York. A fellow was brought up, charged with drunkenness. It was a clear case. The testimony showed he had been intoxicated for a whole week. The man was asked what he had to say for himself?

"Well, yer honor, me and my old woman never did live easy together."

"That's no excuse for getting drunk."

"You're right, yer honor; and so it isn't. We used to fight like cat and dog together."

"Drinking only made it worse," put in the court.

"That's true; she discouraged the life out of me and kept me poor, until last week, when——"

"Well, what did she do last week?"

"She died, yer honor."

"And you have been drunk ever since?"

"Yes, yer honor; I never could bear prosperity."

Richard Varick, Esq., a gentleman of high character and a man, naturally, of the strictest truth, could be made irritable, incoherent and unreliable. Mr. Emmet, knowing Mr. Varick's temperament and being one of the counsel in a suit where the latter was a witness, gave a cue to his associate for cross-examining Varick. "Poot him into a passhun," whispered Emmet, pursing up his mouth, as his habit was; "poot him into a passhun." This was managed and counsel so worked up and worked upon Mr. Varick that his cross-examination really ran counter to his direct testimony.

Mr. John Anthon, in a New York court, was defending against an action for seduction. The plaintiff was on the stand as a witness. Our brother, after some questions, asked her whether she was intimate with other men?

The girl, very indignantly, responded, "That is my business."

"Oh! it is your *business*, is it, Miss; then," turning to the jury, "gentlemen of the jury, if that kind of thing is the plaintiff's business, she certainly has no business here."

There are witnesses indomitable in their truthfulness, even although what they say may criminate those who are near and dear to them; and this trait shows itself most commonly and beautifully in young people. Witness the following:

In 1861, a German was tried at the Oyer and Terminer in New York, before Judge Leonard, for arson. The nephew of the accused, a small, honest-looking boy was the principal witness against him, the boy having kindled the fire at the instigation of

the uncle; and, confessing to that effect while in prison, the district attorney put him forward as a witness for the State. The boy was upon the stand some hours the first day, and was subjected to a rigorous cross-examination, but it did not make him alter his statement. Towards the close, the counsel, not satisfied—as he chose to say—that the little fellow rightly understood the questions which had been put to him, had an interpreter appointed by the court.

“Ask him,” said he to the interpreter, “if he does not know that his evidence in this case will injure his uncle and if he does not think it will benefit himself.”

The interpreter, putting the question—the boy looking at him with earnest eyes—awaited the answer, then turned toward the court and said: “He does not know whether it will injure his uncle; he does not know whether it will benefit himself; *he believes in God!*”


What pure yet solid truthfulness shines out in this boy!

Judge M——, of one of the Western counties, in his early days liked a quiet game of cards and was reputed to be a proficient in euchre, high-low, bluff, &c. Holding a circuit, counsel for the plaintiff was examining a reluctant witness and, in the course of inquiry, put some question to the witness, which was objected to by the counsel for the defendant and ruled out by the judge as improper. This sort of thing was repeated again and again, in different forms, until the judge, out of patience, called out to the plaintiff's counsel:

“Mr. B——, if you have got any trumps, you had better play them and not undertake to nig any more.”

On a trial for an alleged nuisance, caused by offensive smell, a witness testified that it was very offensive, most offensive, most exceedingly strong and sickening—running through all the changes of indefinite expression. Counsel, in cross-examination, insisted that the witness should give something more than his conclusions of the annoyance, that he should particularly state the exact extent of this smell. The witness, thus pressed, exclaimed, at last:

“Well, I'll tell you how strong the smell was—it was strong enough to stop a clock!”



We have, here, a fixed delinition of a nasal nuisance. It seems more difficult to say conclusively when a man would be considered drunk. Cassio was certain that he was not drunk: "This is my right hand and this is my left. I am not drunk now; I can stand well enough and I speak well enough." In the Court of Sessions, Edinburgh, an official from Leith recently declared that a man was not drunk so long as he could lie on his back and call for a coach.

In a case where a German witness was offered and counsel objected most strenuously to his introduction—believing, from his appearance and manner and the eagerness of his opponent to get him in that he would damage—the judge decided to admit him. All, however, that was got out of him was this:

He was asked whether he went to A. B.'s house, and if so, what he said.

"I did went and he told me to get out."

"Well," said the counsel, "what then?"

"Den I did get out."

A suit was brought before a magistrate in the village of Randolph and during its progress an Indian was brought forward to testify. His blank, expressionless face and the general unmeaningness of his whole demeanor gave rise to a serious doubt in the mind of the court as to the admissibility of his testimony. Accordingly, he was asked what the consequences would be if he should tell a falsehood under oath. The countenance of the Indian brightened a little as he replied, in a solemn tone:

"Well, if I tell a lie, guess I be put in jail great while, may be. Bimeby I did, and then I ketch it again."

The witness was admitted. We presume he was allowed to give evidence on the doctrine which appears in New York cases, that a belief of punishment in this world is sufficient to justify the introduction of a witness holding such faith.

In connection with the above, we ask to be allowed to travel into another State for the following:

At a criminal term of the Superior Court in Lawrence, Massachusetts, a boy six years old was called as a witness in a case of

assault. The district attorney, having some doubts whether a boy of so tender an age knew the nature of an oath, proceeded to ask him a few questions :

District Attorney.—“ Little boy, do you know what it is to testify ?”

Little boy.—“ I suppose it is to tell the truth.”

District Attorney.—“ Yes ; but what would be the consequence if you did not tell the truth ?”

Little boy.—“ I suppose I should be sent to jail.”

District Attorney.—“ But would not God punish you ?”

“ No ; I guess not ; dad’s a Universalist.”

The son of a Dutchman in the northern part of the State was not making the wisest disposition of his property ; and the father, seeing no other way to stop Bill’s extravagance, instituted proceedings to have him decreed a lunatic. When the matter came up before commissioners, the father was the first witness.

Counsel.—“ How long, Mr. S——, since you first thought your son was becoming insane ?”

Mr. S——.—“ A little over a year.”

“ Please state to the jury what it was that first awakened your suspicion ?”

Witness.—“ *He jined the meetin’.*”

Counsel.—“ Well, Mr. S——, what else did you see in his conduct that led you to doubt his sanity ?”

Mr. S——.—“ *He gave the minister a load of hay.*”

John A. Spencer, in the McLeod case, used this strong sentence in referring to the testimony of a witness :

“ But before he left the stand a few facts leaked out, like rain-drops after a long drought.”

Sometimes a witness will attempt to be his own pleader and, in that way, think to get the sympathy of the jury with him. Joseph L. Joseph failed, having transferred, through his brother Solomon, valuable furniture to his wife. An attempt was made to set aside the transaction and Charles O’Conor was retained.

Solomon Joseph was under examination as a witness, giving his evidence with great slowness, caution and plausibility. He would,

when a question was asked, throw an appealing look toward the jury and say :

"But I did it, gentlemen, under the advice of my counsel."

Scarcely a touching question was put but what there would come the ending, "but I did it, gentlemen, under the advice of my counsel." Wishing still to show his sympathy with what he was examined about, he again, turning confidingly towards the jury, said :

"And I can assure you, gentlemen, that I positively cried—cried, gentlemen, like a child."

"And pray, sir," retorted Mr. O'Connor, with a side-sarcastic glance, "did you do that under the advice of your counsel?"

In examining Jacob A. Stamler as to the reason of his making an assignment for creditors, Jacob said :

"People threatened, I feeled quite bad, and I *hev* up."

In 1852, a case was being tried on Long Island about the soundness of a horse, in which a clergyman, not very conversant with such matters, appeared as a witness. He was a little confused in giving his evidence ; and a blustering gentleman of a lawyer, who examined him, at last, said :

"Pray, sir, do you know the difference between a horse and a cow?"

"I acknowledge my ignorance," replied the clergyman ; "I hardly know the difference between a horse and a cow or a bully and a bull—only that a bull, I am told, has horns and a bully"—bowing with mock respect to the lawyer—"luckily for me, has none."

Those who attempt to browbeat a witness, should know him well. A celebrated member of the New York bar attempted to impeach one.

Counsel.—"How old are you?"

"Seventy-two years."

"Your memory, of course, is not so brilliant and vivid as it was twenty years ago, is it?"

"I do not know but it is."

"State some circumstance which occurred, say twelve years ago, and we shall be able to see how well you can remember."

Witness.—“ I appeal to your honor if I am to be interrogated in this manner ; it is insolent.”

Judge.—“ You had better answer the question.”

Counsel.—“ Yes, sir, state it.”

Witness.—“ Well, sir, if you compel me to do it, I will. About twelve years ago you studied in Judge B——’s office, did you not?”

Counsel.—“ Yes.”

Witness.—“ Well, sir, I remember your father coming into my office and saying to me, ‘ Mr. D——, my son is to be examined to-morrow and I wish you would lend me fifteen dollars to buy him a suit of clothes.’ I remember, also, sir, that from that day to this he has never paid me. That, sir, I remember as though it was yesterday.”

Counsel.—“ That will do, sir.”

Witness.—“ I presume it will.”

The getting nothing out of a witness was, perhaps, never better exemplified than in a case at a Circuit Court in a midland county. It had relation to a sale of personalty claimed to have been sold some time previously under an execution and the plaintiff called a witness to establish the fact of a sale. Cross-examination :

Counsel.—“ Sir, you say you attended the sale on the execution spoken of. Did you keep the minutes of that sale?”

Witness.—“ Don’t know, sir, but I did ; don’t recollect whether I kept the minutes or the sheriff or nobody. I think it was one of us.”

Q. “ Well, sir, will you tell me what articles were sold on that execution?”

Here the witness hesitated, not willing to commit himself by going into particulars, until the patience of the counsel became exhausted and he pressed a special interrogatory.

Counsel.—“ Did you on that occasion sell a threshing-machine?”

A. “ Yes, I think we did.”

Q. “ I wish you to be positive. Are you *sure* of it?”

A. “ Can’t say that I *am* sure of it ; and when I come to think of it, I don’t know as we did ; think we didn’t.”

Q. “ Will you swear, then, that you did *not* sell one?”

A. "No, sir ; don't think I would ; for I can't say whether we did or didn't."

Q. "Did you sell a horse-power?"

Witness.—"Horse-power?"

Counsel.—"Yes, horse-power."

Witness.—"Horse-power ! well, it seems to me we did. And then, it seems to me we didn't. I don't *know* now as I can recollect whether I remember there was any horse-power there ; and if there wasn't any there, I can't say whether we sold it or not ; but I don't *think* we did ; though it may be, perhaps, that we *did* after all. It's some time ago and I don't like to say certainly."

Q. "Well, perhaps you can tell me this : Did you sell a fanning-mill?"

A. "Yes, sir, we sold a fanning-mill. I guess I am sure of that."

Q. "Well, you swear to that, do you ; that one thing ; though I don't see it on the list?"

A. "Why, I may be mistaken about it ; perhaps I am. It may be it was somebody else's fanning-mill at some other time : not sure."

Counsel (to the court).—"I should like to know, may it please the court, what this witness *does* know and what he is *sure of*."

Witness.—"Well, sir, I know one thing that I'm sure of and that is that on that sale we sold either a threshing-machine or a horse-power or a fanning-mill or one or all or neither of them, but I don't know which."

This getting of nothing was well exemplified in a dialogue in the western islands of Scotland :

"How long is this loch?"

"It will be about twanty miles."

"Twenty miles ! Surely it cannot be so much."

"May be, it will be twelve."

"It does not really seem more than four."

"Indeed, I'm thin'ing you're right."

"Really, you seem to know nothing about the matter."

"Troth, I canna' say I do."

Not many miles from the county town of "old Genesee, New York," there lived, in the early settlement of the Holland purchase, neighbors most uncongenial and litigious. The offences which they were guilty of against one another were the letting down of fences for the depredation of cattle; throwing geese, pigs and such like into wells; shooting fowls; but more generally, matters assumed libel suits, damages usually laid at \$1,000. Sol S—— missed an axe and remarked to a hired man, he believed old Wheaton had stolen it. The latter soon heard of this and as Sol, to use his expression, was not the man to "chaw his words," a suit was commenced for defamation of character. The evidence closed with the examination of Ben. Beebe as a witness for the defence:

Counsel.—"What is your name?"

Witness.—"Bees."

Q. "This is no time for pleasantry or evasion. What is your name?"

A. "You know as well I do; Ben. Beebe at home or abroad."

Q. "Well, witness, are you acquainted with Mr. Wheaton?"

A. "What, old Joe there! *know* him? I should think so!"

Q. "Well, what is Mr. Wheaton's general character in the neighborhood where he resides?"

A. "I'd rather not testify to that question, squire. I'm not the man to speak agin' my neighbor."

Q. "Please answer, witness. What is Mr. Wheaton's general character; and do you think he would steal the axe?"

Witness.—"If I must, I must. As to general character, I think the least said about *that* the better; and as to stealing an axe, that's a leading question."

Court.—"Answer the question, witness."

A. "Well, squire, don't know that I can swear that the old man would steal Sol's axe; but, I'll tell you what I can swear to, squire: *when old Joe wants an axe, he is bound to have it!*"

On a trial at Auburn, the counsel for the people, after severely cross-examining a witness, suddenly put on a look of severity and said:

"Mr. Witness, has not an effort been made to induce you to tell a different story?"

"A different story from what I have told, sir?"

"That is what I mean."

"Yes, sir; several persons have tried to get me to tell a different story from what I have told, but they couldn't."

"Now, sir! upon your oath, I wish to know who those persons are."

"Wall, I guess you've tried 'bout as hard as any of 'em."

Judge Daniel Cady, while a justice of the Supreme Court, was holding a circuit in one of the northern counties. A cause came on for trial which involved the title to lands and required proof of old land-marks and boundaries. It was necessary, therefore, for the parties to call as witnesses some of the oldest residents. Among other witnesses, an old gentleman by the name of Wood was called and gave his testimony in a clear, intelligent and satisfactory manner. At the close of his evidence, Judge Cady said he would like to ask him a few questions if he were willing. Wood said "Certainly."

His honor.—"How old are you?"

"I am seventy-nine years of age."

"May I ask you what have been your habits through life?"

"My habits have been very regular. I have been very temperate. I don't think I could tell the different kinds of liquor by their taste, for I never drank intoxicating liquors. I have been in the habit of retiring early at night and rising by daylight in the morning."

The judge, who was noted for his temperance views, took occasion to deliver a short lecture to those in attendance on the blessings arising from habits of industry, method and especially of temperance. "You see this man," observed his honor, "at quite an advanced age, in possession of all his faculties, in good health and you have heard the clear and intelligent manner in which he has given his testimony—permit me to recommend him as an example which it might be well for many to follow."

The next witness called was also a Mr. Wood—brother of the

model temperance man ; and who also gave his testimony in as clear and intelligent a manner. At its close, Judge Cady also said to him : " If you have no objection, Mr. Wood, I should like to ask you questions similar to those I put to your brother."

" Certainly."

" How old are you, Mr. Wood ?"

" I am seventy-seven years of age."

" What have been your habits through life ?"

" Well, judge, I can't say, as my brother has, that I have been regular in my habits or temperate. To tell you the truth, judge, I have hardly seen a sober day or been to bed sober since I was a boy. I have been a hard drinker all through life."

" Well," exclaimed the judge impatiently, " I don't see as it makes any difference with this Wood whether it is wet or dry !"

Judge Daniel Cady was one of the eminent of the old school lawyers of the State. When at the bar he was an ugly adversary to meet at *Nisi Prius*. Once, as counsel for a defendant in an action of slander tried at Madison Circuit, he was opposed by the late Judge Gridley. The case excited an unusual degree of local interest and the court-room was crowded with witnesses and an audience of eager listeners. It was expected to be a long trial ; attacks and defence of character were expected—indeed, all that is vulgarly interesting in a slander-suit was looked for on this occasion. And the plaintiff's counsel opened the case accordingly. The enormity of the slander was portrayed in vivid colors and exemplary punishment of the slanderer was demanded. The plaintiff proved the words ; his witnesses were not cross-examined and his counsel rested, looking for the bringing out of the great features of his case when it should fall to him to respond to and overwhelm the defendant's testimony. When the plaintiff rested, Mr. Cady, with becoming gravity, arose and addressed the jury for half an hour, speaking of the case as amounting to an unfortunate difficulty between two neighbors and observing that what his client had said was uttered in a moment of passion and not deliberately intended to injure the plaintiff ; that, in fact, it had not injured him in the least ; and though the defendant was legally liable and did not pretend to

deny such liability, still the case was a trifling one and should really never have been brought there to occupy the valuable time of the court and jury. He then sat down. Gridley, in surprise, inquired why he did not call his witnesses and proceed in the trial. Cady answered that the case on the part of the defendant was closed. Gridley was a lawyer of great tact and ability, but this was too much even for him. He made as good a summing-up as the circumstances admitted, but Cady's quiet and passive ingenuity proved successful, for the jury were not persuaded that the case was a grave one and the anticipated verdict of hundreds, perhaps thousands, was reduced to six cents. Gridley often spoke of this occurrence and said it was the neatest trick ever practised on him in his long professional life.

A case in New York in which people of color were both parties and witnesses. One of the latter was brought to depose he would not believe a certain other under oath.

"But, why would you not believe him?"

"Because, he's a bigoted nigger."

A similar question was asked, and still came the answer, "He's bigoted."

"But, what do you mean by his being a bigoted nigger?"

"Well, he knows too much for one nigger and not too much for two."

Captain Beecher, who used to sail a vessel from New York to New Haven, was a dreadful man at oaths. An old sailor of his crew was called up as a witness in a New York court. His rude, reckless manner made the judge sternly ask him if he knew the nature of an oath. Answer: "Don't you suppose I have sailed long enough with Captain Beecher to know what an oath is?"

At a Circuit Court in New York, Mr. William Fullerton was examining a witness, who had been a miner—a man unused to the world and its courts and the greater part of whose life had been, like that of a mole, under ground. He was examined as to the width and length of a seam of coal or something of that nature. Fullerton having got what he inquired about, passed the witness over to his opponent, Mr. Larocque; but the man had already taken

up his hat and was about to leave. However, further questions were put, until Mr. Larocque made the witness more than restless by a specific personal one which he would not answer and again took up his hat and was departing, when the judge chimed in :

"Captain," said his honor firmly, "you must answer that question."

Now, up to this period the witness had not observed any judge and hardly knew there was such a personage ; for he bawled out :

"My God ! are there three of you ? are you also going to put *your* oar in ?—then I'm off"—and he did go then and there, wildly and hastily out of the court-room.

This is about equal to the Texan mentioned in "A Stray Yankee in Texas :—" "—— and so afore long the sheriff called on me, and told me I wer' wantêd very perticular up to court. Well, I didn't like to disoblige and so I went along with him ; and when we got thar' they made me set down, and pretty soon a feller got up and begin to talk about me in a way that warn't flatterin' to my feelin's at all. He seemed to hev took a prejudice agin me. After he'd done, the old chap that sot on a high bench had his say, and, dern him, he'd got a prejudice agin me too. When he'd got through, the jury had their turn, and, hang my pictur', Mr. Roberts, ef they hadn't got a prejudice agin me !"

A by no means handsome lawyer was worrying Professor James J. Mapes on the witness-stand. The matter had relation to personal identity :

"What sort of a looking person was he ? Was he long or short ? Was he heavy or light ? Was he young or old ? Was he good-looking or ill-looking ? Did he look like me, sir, or did he look like somebody else ? Now, sir, see if you can answer these questions directly and without equivocation."

The witness, with a broad, pale, unmovable countenance, replied :

"He was a good-looking man. He did *not* look at all like you, sir !"

A well-known wag, Fred. ——, was charged, before a justice in Western New York, with assault and battery on a negro who had

kicked Fred.'s dog. The court-room was crowded ; and he, discovering many of his personal friends among them, demanded a jury. After the evidence of the State had been heard, Fred. was called on to produce his witnesses. Whistling to the dog, whose maltreatment had given rise to his master's difficulties, and bidding him sit up directly in front of the justice, he inquired of him pathetically :

"Did the nigger kick you, Carlo?"

"Wow! ow! ow!" growled the brute.

"We rest here," said Fred.; and the jury found the dog's master not guilty.

We find in the Forrest divorce case a classifying of witnesses as to their truth, in terms similar to those used by insurers as to vessels.

Question.—"What have you said of him?"

Answer.—"I have spoken of him as a man who does not stand A. No. 1 in the community."

Q. "Do you know Mr. Hollister's character in the community?"

A. "Well, if you ask me that, I should say he stands at No. 2."

There was in Oswego County a Scotchman known as old Jackey Foster. He said he was in the battle of Culloden in 1746. He was a coarse, low-witted man and not very scrupulous. On one occasion he had been sworn as a witness, when, on coming out of court, Judge Cooper asked him whether he had sworn to the truth. Foster laid his hand upon his breast and raising his eyes, said, with much apparent solemnity :

"I have, judge, as I am a Christian mon."

"But did you tell the whole truth?"

"Yes, yer honor" (with a significant wink of the eye), "and a — sight more."

Mr. Gerard was cross-examining a party who had previously been on very intimate terms with the former's client, but they had become estranged and hostile. The witness had evinced his inimical feelings to such an extent, in the way he gave his testimony, that he found it necessary to make an explanation. He said his relations with his present adversary, up to a certain time, had been

of the closest character ; they had been, in fact, like brothers : "but now"—before the witness could go further, Gerard finished for him—"now, you are brothers *in law*."

How far the open charge of corruption made against many of the municipal body of New York, at the time of the occurrence we are about to relate, may have been correct, we shall not stop to confirm ; but we are quite sure that our friend Judge Whiting, then on the Supreme Court Bench and who had been an alderman of the seventh ward of the city of New York, would rather have coined his heart and dropped his blood for drachmas than to have ever wrung out vile trash by any indirection. However, he was presiding as judge ; and a witness was thus cross-examined :

"How many years have you been in this country ?"

"Twenty-five."

"What did you first do after you came here ?"

"I was a drover."

"What next ?"

Here the witness seemed to begin to wince and to suggest he was not bound to answer any thing which would disgrace him ; and it was some time before he could be got to reply, that he became a city contractor.

"And what after that ?"

Here the man appeared to have braced himself up and declared again he would not and was not obliged to answer as to what would disgrace him. Counsel insisted on a response ; and Judge Whiting said :

"Witness, you must answer the question."

Still he considered it hard and illegal that he should be compelled to give a reply which would disgrace him. Counsel and judge were inexorable.

"Then," said the witness, "if I must—I have to say I was an alderman of the seventh ward for two years."

At an Oneida Circuit in 1819, a man was offered as a witness ; but it was proved he had, within three months before the trial, deliberately declared he did not believe in a future state of rewards and punishments, nor in the resurrection of the dead—that

he would as lief be sworn on a spelling-book as the Bible and that man was like the beasts ; when he died there was an end of him. The proposed witness, through counsel, then stated he did not know that he had any reason to doubt that there was any after state of rewards and punishments. He was allowed to testify ; but on a motion to set aside the verdict, the full court considering such a witness should not be heard, a new trial was granted. (*Jackson v. Gridley*, 18 *Johns. R.*, 98.)

How would it have been with poor Jo from "Tom-all-alone's," before an American jury ?

"Oh! here's the boy, gentlemen! Here he is, very muddy, very hoarse, very ragged. Now, boy! But stop a minute. Caution. This boy must be put through a few preliminary paces. Name, Jo. Nothing else that he knows on. Don't know that every body has two names. Never heerd of sich a thing. Don't know that Jo is short for a longer name. Thinks it long enough for *him*. *He* don't find no fault with it. Spell it? No. *He* can't spell it. No father, no mother, no friends. Never been to school. What's home? Knows a broom's a broom and knows it's wicked to tell a lie. Don't recollect who told him about the broom or about the lie, but knows both. Can't exactly say what'll be done to him arter he's dead if he tells a lie to the gentlemen here, but believes it'll be something wery bad to punish him and serve him right—and so he'll tell the truth. 'This won't do, gentlemen!' says the coroner, with a melancholy shake of the head. 'Don't you think you can receive his evidence, sir?' asks an attentive juryman. 'Out of the question,' says the coroner. 'You have heard the boy. Can't exactly say, won't do, you know. We can't take *that* in a court of justice, gentlemen. It's terrible depravity. Put the boy aside.' Boy put aside, to the great edification of the audience, especially of Little Swills the comic vocalist."

Mr. Ambrose L. Jordan had great power in cross-examination, with biting sarcasm, and was known to some as "Aquafortis ;" and his fame was along the "river counties." A little tailor who, in his own estimation, was an embodiment of nine men and a great one in small taverns, was holding forth and only wanting the

chance to be a witness wherein he could handle "Aquafortis." A cause of interest placed him in this enviable position. He was the principal witness; and opened magnificently on Jordan, to the amusement of the bystanders. He went even further in his antagonistic daring. So far, indeed, as to make the opposite counsel try to restrain him. On this, Jordan started up and exclaimed—

"Let him go on! Let him go on, for mercy's sake! If there be any thing in life I enjoy, it is a witty tailor!"

Court, jury and audience took the full force of and enjoyed this, while the witness, no longer blown up into nine valorous men, collapsed into, what he always had been, a very little tailor.

Mr. James T. Brady was in a matter where an Irish hack-driver was a witness.

The Court.—"How fast were you driving, James?"

Witness.—"Oh, very slow, your honor; very slow."

Court.—"But how slow, pray?"

Witness.—"Why, your honor, between a walk and a stand."

Court.—"I don't understand that."

Mr. Brady suggested that it was very plain: a hackman's stand is always on the walk.

Justice G——, of the Sixth District was holding the summer circuit in Chenango County. The day was very hot and sultry. A very fat old lady was called as a witness. She took a seat, pulled out a handkerchief and tried to wipe the perspiration from her face. The more she did so, the redder and hotter she grew. In an agony of heat she began to try to untie the strings of her bonnet, but "her fingers were all thumbs," and she only succeeded in tying a hard knot. Finally, she turned to the judge, who was celebrated for his urbanity and kindness to women and asked him to untie it for her, which he did.

"There, thank you, judge," said the old lady, with a profound courtesy; "when I have any thing to do, I always like to strip to it."

A criminal case of assault and battery came on at Albany. It showed how a witness was bothered and counsel could use exaggerated language. The advocate for the prisoner commenced the cross-examination of John Jones, a lame man, his right hand pal-

sied, his hair all awry and looking as if he had had a hard night of it.

"You have sworn in this case that you saw an assault made by my client, the prisoner at the bar, upon the person of the prosecutor in the present case?"

"Yes, I did."

"Oh, you did! The court will observe that this is one of two classes of witnesses that professional gentlemen of the law have an especial disgust at encountering—a too willing or a too unwilling witness. However, permit me; sir, hold up your head. If you are not about to swear to a falsehood, look upon the court, the jury and this large and intelligent audience."

"Yes, sir, I expect to, that is exactly what I expected—what I wanted to do."

"Yes, no doubt, you wanted to do it, but you were overruled, you were tampered with. Never mind" (with a wink to the jury), "we'll try to get the truth out of you, anyhow, despite the most ingenious prevarication. Well, sir, let me ask you, in the first place, did you have an unclouded view, were your optics undimmed, were your eyes all right when you saw my client previous to resorting to corporeal extremities, attempt to coerce and preponderate upon the excited fears of the prosecutor in this case?"

"Sir?"

"I say, I ask you for the second time, did you see any person attempt to aggravate the fears and enhance the apprehensions of my client?"

"I don't know; I might perhaps. But what was you a-sayin' of?"

"The court will please to observe, I asked the witness as to his personal evidence in this case, whether he himself saw the offence committed—I mean, of course, the alleged offence. I shall now put to him a direct and unevadeable question. I ask you now, did you have an unclouded view, were your optics undimmed when you saw this person, this individual, this prisoner at the bar, raise his muscular arm and attempt to coerce and preponderate upon the already sufficiently excited fears of my client?"

"Sir?"

"The court will observe," continued the advocate, "that the witness desires to prevaricate. He delays an answer to my interrogation, which, as your honor must have seen, was a very simple one, in order to make up a reply that will hold water. But we shall see about that. Now, sir, I ask you again—look me in the face, sir, and at the court, sir, and at the jury, sir—did you see this person, this man, this individual, did you see this prisoner at the bar of this court, did you see him raise, as I have said, his muscular and outstretched arm and endeavor to excite and exaggerate the already greatly excited fears of my client?"

"Sir?" asked the witness again. "I am afraid I don't understand you. What was you a-sayin' of?"

The counsel turned to the court, with a ludicrous expression of astonishment, and said—

"The witness does not understand me!"

Judge.—"If the counsel would use less circumlocution, his case would be much plainer stated."

"What does your honor mean?"

"I mean, sir," said the judge, "that you cover a very large piece of bread with a very small piece of butter. Ask the witness if he saw a blow given and to whom."

Counsel here said to the witness—

"Did you see him strike him?"

"I did and he knocked him down."

"Why didn't you say so before?"

"'Cause you didn't ask me."

In the town of Little Valley, Cattaraugus County, an effort was made to impeach the testimony of a raftsmen; and one who had worked on a raft with him was called for this purpose. He was asked as to the man's general character for truth and veracity. He answered, he did not know his general character for truth and veracity, "but he's a miserable cuss at an oar and I'd believe no such man on his oath."

We have heard of another witness, who would not believe a man under oath, from the simple fact that the latter was not able to make a straight fence.

Judge G—— is apt to chime in on the examination of a witness. While holding a circuit at Warsaw, a dentist was put upon the stand, to prove a conversation with the plaintiff. On cross-examination, the counsel for the plaintiff asked him if he had not had trouble with the plaintiff. Witness answered he had.

"Well," asked counsel, "did you make a set of teeth for his wife?"

"Yes."

"Did not the plaintiff find fault with them?"

"Yes."

"Does she wear them?"

Yes."

"She had another set made by another dentist, had she not?"

"Yes."

"Is she not wearing them?"

"Yes."

Here Judge G—— thought it was time for him to chime in.

"What! witness, do you mean to say she is now wearing both sets of teeth?"

"Yes."

"Well," added the judge, "just explain to us how that can be?"

"Why, your honor, she has one set in each jaw."

The father of Mr. James T. Brady was a counsellor of the New York Bar. He was engaged to defend a man at the Sessions; and an Irish witness from Newburgh, not long in the United States, was handed over to Mr. Brady to cross-examine.

"Well, sir, and where do you live?"

"At Newburgh when I'm at home."

"When did you come to the city?"

"A day before yesterday."

"How did you come to the city?"

"And how did I come, de ye want to know?"

"Yes, how did you come—by land?"

"No and I didn't."

"By water?"

"No and I didn't."

Mr. Brady raised his spectacles to his forehead, folded his arms and with a somewhat conquering manner, asked—

"Well, if you neither came by land nor water, how did you come?"

"I came afoot, ye spalpeen ye—why don't ye spake English?"

A schoolmaster was on trial in New York for cruelty in whipping a scholar. Several witnesses had testified that the teacher had, in his chastisement, used a piece of whalebone taken from an umbrella. A small lad, some ten years of age, having given his evidence, the presiding judge, thinking counsel had been careless in his questions, leaned over the bench the better to get the small witness in view and said—

"Well, my little man, so the teacher flogged the boy with a whalebone taken from an umbrella, eh?"

"Oh, no," was the boy's answer.

"What then?"

Boy.—"With a piece of bone taken from a whale, sir."

In a well-known matter which came up before the New York Court of General Sessions in 1817, known as Martha Codd's case, and being an indictment for libel against members of the bar and having indirect reference to a divorce suit between Mrs. Codd and her husband Colonel Codd, a witness named Isaac Sherman was requested by Mr. Baldwin, counsel for the husband, to state what he knew relating to the case. He answered—

"All I know is that Colonel Codd has offered me one thousand dollars to swear to a lie."

Whereupon Mr. Baldwin rose and said—

"Mr. Sherman, I am surprised at your blowing up Colonel Codd in this manner."

To whom the witness deliberately replied—

"Sir, I do not blow up Colonel Codd—I only furnish the magazine and leave it to the court to blow him up."

The same witness was asked as to his receiving money from any other source, when he said—

"I received three dollars and fifty cents from Mrs. Codd."

Question.—“For what purpose and on what account?”

Witness.—“For wheeling three pigs from market up to her house at Greenwich.”

Counsel.—“This surely could not have taken more than three hours?”

Witness.—“One of the pigs got out of the bag and it took me as much as three hours to catch it.”

CHAPTER VI.

CONTEMPT OF COURT.—COLLISION AND COLLOQUY BETWEEN BENCH AND BAR AND BETWEEN LAWYERS.—MALPRACTICE.

REPUBLICANISM breeds familiarity ; and our judges who, for some time past, have been and, more especially in the present, are subject to political prejudice if not to political influence, have a hard task, when they are willing to try to avoid familiarity with bar, jurors and suitors.

The definition of liberty with some persons is taking a liberty ; and the divinity which has been said to hedge in a ruler, is little thought of by those who are, from circumstances and for purposes, around a judge.

Although the sober and thinking American generally does not believe that all men are born free and equal and tacitly admits distinctions and renders to Cæsar what is due to Cæsar, yet the familiarity of which we have spoken makes some members of the bar not see the grand distinction between a Vicegerent of justice and their individual selves ; and so at times—only at intervals, long intervals—what are called contempts of court come.

These must form a part of a work like ours and, so, we give them.

Mr. John V. N. Yates, of Albany, was a lawyer of standing and a master in chancery. He was employed to add notes and references and succinct matter, touching the law under our colonial government, to the Revised Laws of New York, 1813. He was committed for malpractice, such malpractice consisted in subscribing the name of another solicitor. without his knowledge or con-

sent, to a bill in chancery and in acting as solicitor thereunder in the name of the seeming solicitor, contrary to statute.*

Judge Spencer, of the Supreme Court, had discharged Mr. Yates by virtue of *habeas corpus*, on the ground that the original cause of caption was illegal and the taking and detaining him for the same matter was illegal and unwarrantable and subversive of the liberties of the citizen. Whereupon the Court of Chancery, deeming the discharge repugnant to the laws of the State and void, ordered the sheriff to retake and recommit Mr. Yates. This was done, when Mr. Emmet moved for a *habeas corpus* to bring up the body of the prisoner, which was granted* by Chief Justice Kent. On its return, Mr. Emmet—we use the name of Emmet alone, although Mr. Champlin was associated with him—made a most noble argument in support of a motion to discharge. Indeed we do not think there is any thing upon our law-books showing Mr. Emmet's legal acumen more than in this argument.

The court decided that the discharge granted by Judge Spencer was not conclusive either upon chancery or the Supreme Court; and that the court of law had no power to discharge a person committed by the Court of Chancery for a contempt. An order was consequently made to remit John V. N. Yates to custody. He had, however, been bailed to appear during the term and not appearing, his recognizance was ordered to be forfeited. (Case of John V. N. Yates, 4 *Johns. Rep.*, 317.)

But the case went to the Court for the Correction of Errors, although the Chancellor had assumed to supersede the writ of error; and a majority of the Senators were of opinion that the Supreme Court had decided erroneously and there was not in law sufficient to detain John V. N. Yates. (*Yates v. The People*, 6 *Johns. Rep.*, 335.)

Yates brought an action against Chancellor Lansing, to recover a penalty of \$1020, given by a section of the Habeas Corpus Act,

* There is a case in the English Exchequer where a solicitor was attached for putting the name of a counsellor to a bill without his knowledge, privity or consent. (2 *Fowler's Exchequer Practice*, 480.)

which declared that no person who had been set at large on any *habeas corpus* should be again imprisoned for the same offence, unless by the legal order or process of the court wherein he was bound by recognizance to appear or other court having jurisdiction of the cause ; and if any person should knowingly recommit or imprison for the same offence, he should forfeit to the party aggrieved the above sum. The court decided the Chancellor was not liable, as the statute was applicable to individuals acting ministerially out of court and did not apply to the acts of a court done of record ; and that superior tribunals of general jurisdiction were not liable to answer personally for acts done by them in a judicial capacity or for errors of judgment. (*Yates v. Lansing*, 5 *Johns. Rep.*, 282.)

The case went to the Court for the Correction of Errors, where the decision below was affirmed. And it virtually overruled the judgment of the same court in the case where the majority of Senators had decided that there was not law for the detention of Mr. Yates. (Same, 9 *Ib.*, 395.)

The ignorance and peculiarities of what are designated Dutch justices, are illustrated by Mr. Levi Beardsley in his "Reminiscences of Oswego County," p. 188 :

"A Dutch justice came to me once for counsel, who had been sued in an action of assault and battery and false imprisonment by one whom he had sent to jail for contempt. To make his incarceration certain, the justice had given the constable strict injunctions to bind him, and had assisted in tying his legs after he was placed on horseback. The culprit had fallen from the horse either intentionally or accidentally and his feet being tied under the horse's belly, he was dragged a short distance upon the ground. His honor said it was only a device to try to enhance the damages and went on to state the circumstances that led to the commitment. He was delighted with having gotten the fellow into Johnstown jail ; and on my inquiring into the offence which constituted the contempt, he said he "did not recollect the whole of it, but he had ordered him 'committed till discharged by due course of law ;' that he had the jailor's acknowledgment of his reception

and the —— rascal might find out himself what that due course of law was.'

"Another Dutch justice once came to me to consult about the defence of a suit with which he had been threatened, for calling the wife of one of his neighbors a witch and charging her with looking with an evil eye at his cows and bewitching them. He admitted that he made the charge and believed it true ; but I told him it was hardly worth while to get into a lawsuit about such a matter and subject himself to the expense of litigation ; that I knew the woman and whether witch or not witch, I had no doubt that matters could be amicably adjusted when I saw her, which I would and did do soon ; and by talking with her and her husband kindly, neighborly relations were soon restored.

"One more story. At a very early day a Dutch magistrate, who was the father of one I have previously alluded to, had issued a warrant against a lawless neighbor, who had been brought by the constable to answer the plaintiff's action. The justice went to a country tavern to hold his court in the bar-room, which was the only room in the house large enough for the court, jury and attendants and was not far from the line of the county. The defendant was a noted fighter, a hard drinker and very much of an outlaw. He had amused himself, while the jury were being summoned, with drinking and playing with an old dirty pack of cards on one end of the bar-room table. The jury being in attendance, the justice called the parties and had the warrant returned and then directed the plaintiff to state the nature of his demand ; which being done, he, with great humility, and in broken English, asked the defendant, whom we will call Mr. C—— : 'Well, Mr. C——, what do you say to dat?' 'What do I say to that?' says the defendant. 'I say that you are a d——d old fool.' 'Oh ! tut, tut,' says the justice, 'dat may very well be, Mr. C——, but what has dat to do with this case?' At this stage of the proceedings, the defendant knocked down the constable, threw the cards in the justice's face, kicked over the table and cleared out for the adjoining county, where for a long time he concealed himself or eluded those who wanted to take him."

A member of the bar, in one of the justices' courts in New York, became vexed at the functionary who presided and took occasion to remark that this court was *the greatest legal anomaly* he was acquainted with.

"You will not repeat that remark," the justice observed; "it is extremely offensive."

"I am of opinion," responded the advocate, "that the court don't understand the meaning of the term."

Justice.—"Perfectly, sir, perfectly! You mean to insinuate that the court doesn't know beans!"

In the town of Plattsburg, Clinton County, a case was in court which touched the character of a rough man. When judgment was rendered against him, he was so enraged that he sprang to his feet and shaking his fist at the judge, swore he could buy such a court as that for a peck of beans. The judge told him he should fine him five dollars for contempt of court. The man had no such sum about him and as he was given to understand that imprisonment would follow non-payment, he turned to a member of the bar to help him, who, rising, addressed the court, assured the judge of the man's penitence and besought clemency. His honor yielded and expressed a willingness to let the matter drop, if a personal and humble confession was made. Whereupon our man in contempt, arose, confessed his sin and begged to be forgiven. The judge, thereupon, said it should end there. The man, still standing, repeated the assurance of sorrow at having rated such a court so low as to affirm that he could buy it for a peck of beans. "'Twas wrong," he said, "all wrong; but," added he, "if I had said half a bushel, I wouldn't have taken it back—never!"

A member of the bar at Buffalo, while arguing an appeal at the General Term of the Supreme Court, was greatly irritated by the frequent expression of dissent made by the court to his propositions of law. Pausing abruptly at length, in the midst of his argument, he exclaimed, with marked emphasis: "It will, perhaps, be excusable in me to remark that this court strongly reminds me of a Demarara team."

Presiding Judge.—"And what kind of a team may that be?"

"It is said to be composed of two mules and a jackass."

Old John Baldwin was a well-known rough counsellor who practiced in Justices' Courts in a southwestern county of the State of New York. When he found a case in which he happened to be engaged was hopeless, he would "come down" on the presiding officer. One of these threatened, if he continued to abuse the court, to commit him; whereupon Baldwin defied his honor, called him a leather-headed dignitary and said he did not know how to make out a *mittimus*. The justice opened a treatise of forms and having copied down to "Hereof fail not at your peril," old John tilted the contents of an inkstand over the process and taking his hat, said: "There! I shall be out of the county before you can boil down oak-bark enough to write another."

Not long ago, before Justice George G. Barnard, in Supreme Court Chambers at New York, there was a motion to set aside a judgment which had been perfected in the face of an order allowing time to answer. The suit was brought by a member of the bar to recover fifteen hundred dollars for professional services, mainly if not entirely claimed to be due in an unsuccessful attempt to secure nine hundred dollars under a mechanic's lien. A Mr. John Percy assumed to act as counsel for the plaintiff, but proof was produced before the judge that Percy had been thrown over the bar at Albany. The judge vacated the judgment, whereupon Percy showed that the surname of Hotspur still attached to the name and made him find a Prince Harry in Judge Barnard.

Mr. Percy.—"But, your honor, I protest most solemnly. There is nothing here to show that I have been thrown over the bar."

Judge Barnard.—"This court will take judicial notice of its own acts."

Mr. Percy.—"There is no jurisdiction shown in that order. It does not show that the act of the court was justly done."

Judge Barnard.—"You have no standing in this court, Mr. Percy, any more than a convict in State prison has; your appearance here, in undertaking to practice, is of itself a misdemeanor and for this the district attorney will have to take you in hand."

Mr. Percy continued to speak in his own defence and in tones showing much excitement.

Judge Barnard warned him that this would not be permitted. If he would get some respectable attorney to appear for him and plead his cause, he would listen ; but for a man who had been " thrown over the bar," and who had in that court made an exhibition of himself so unprofessional, to persist in speaking after he had been put down and told that he had no standing in court, it could not and should not be allowed while he (Judge Barnard) was on the bench. Dignity and self-respect of the court would not allow it. If Percy did not cease his talk, he would be punished for contempt.

Mr. Hosford, who was associated with Percy, then commenced a speech. He spoke for some minutes, when the court interposed a statement, explanatory of something that had gone before, whereupon Mr. Percy sprang to his feet, and, in a very excited manner, said :

" That's not so, your honor."

Judge Barnard.—" Now, Mr. Percy I fine you \$200 for contempt of court and you are to be committed to prison until the fine is paid, for a time not exceeding thirty days."

Mr. Percy began to make another speech, but was cut short by the court telling him that his next contempt could not be satisfied with greenbacks and if he persisted he should go to jail, no matter how much money he had.

Percy protested he had no money to pay his fine, and that he had a sick family at home. He must go to prison, he supposed, but would not the judge take it all back—he had not intended to insult the court.

The judge was inexorable ; 'directed an order of commitment to be made out and the sheriff took Mr. Percy to Eldridge Street Jail. His honor, during this time, said he must preserve the dignity of the court and this punishment would be a lesson, not only to the present offender, but to some young members of the New York Bar, supposed to be in good standing.

Habeas corpus was issued by Judge Daly of the Common Pleas ; but he, after a hearing, gave an able opinion, ending with a remand of Mr. Percy to prison.

Mr. Cadwallader D. Colden was one of the counsel for William S. Smith, who was tried in 1806, before the Circuit Court the United States in New York, on a charge of aiding General Miranda in an attempt to get up a revolution in Caraccas. Judge Matthias B. Talmadge presided. A plea was interposed and to this came a demurrer and there was an insistment that the prisoner should join in demurrer *instantly*, as the plea was frivolous. A desultory conversation ensued and Colden, protective of the plea, used this language :

"We hope to convince *even this court* that the plea is not frivolous."

He was interrupted by the judge, who called on him to explain what he meant by the words "even this court," and asked whether he had intended to say that the court was prejudiced or partial?

Mr. Colden answered that the words must speak for themselves ; he did not think they imported any such meaning ; he thought the court ought not and could not examine him so as to draw from him answers which might criminate himself and he was not prepared to give any explanation on the subject.

The judge ordered him into the custody of the marshal. While the order of commitment was preparing, Mr. Colden appeared to consult with some of his friends immediately about him and again addressed the court, stating he knew it had the power to commit him and that he had no appeal to any other tribunal ; that he had no disposition, where professional duty did not require it, to enter into a struggle with such disparity of strength or to make unavailing efforts against irresistible authority ; and he had, therefore, committed to paper an explanation which he begged leave to read and which was as follows :

"By the words *even this court*, I meant to express a hope that, notwithstanding the court was composed of the magistrate who took the depositions below and who, therefore, may be supposed to have his mind influenced by testimony which he ought not to have heard and which, it was supposed, could not have been offered in court here, I should be able to convince even this court, though it might be more difficult so to do than to convince a court the mem-

bers of which were new to the business. I meant no contempt of the court."

Judge Talmadge then asked Mr. Colden for the paper he had in his hand, which the latter declined giving, saying it was only his notes from which he had spoken. He, however, by desire of the judge, again read over the paper he had written, upon which his honor said the apology was sufficient and told the marshal that he might discharge *that man* out of custody. (Trial of William S. Smith and Samuel G. Ogden, New York, 1807, p. 25.)

It should be put to the credit of Mr. Colden that, when all others of the leading members of the Bar stood aloof from Thomas Addis Emmet on his arrival and admission and even, as the term is, put him into Coventry, Mr. Colden openly protested and gave Mr. Emmet the right hand of fellowship.

A mural monument has been erected in Grace Church, New York, to the memory of Mr. Colden. The inscription, written by Mr. Gulian C. Verplanck, is as follows :

TO THE MEMORY OF CADWALLADER D. COLDEN,
For several years Mayor of this City, a Senator of this State,
And one of its representatives in the Congress of the U. S.
His talents and public services added lustre
* To these and many other
Honours and trusts bestowed upon him by his native city.
He was alike eminent for legal learning and eloquence,
For ardent love and pursuit of general science,
And for the successful application of all his acquirements
To the best interests of his country.
As his Philanthropy and Patriotism
Commanded the confidence and attachment of his fellow-citizens,
So his Kindness, Frankness and Generosity
Won the warm affections of his family and of numerous friends ;
By one of whom, who had witnessed most nearly,
And, therefore, best estimated his worth,
This monument is erected.

Marcus T. Reynolds was in the small room of the Capitol where Chancellor Walworth was holding court. Mr. Edwin A. Doolittle happened to come in and said :

"Reynolds, would it be contempt of court to eat an apple while the chancellor is on the bench?"

"Yes," answered Reynolds, and then he gave imaginary cases, as from the Year-Books down, in point.

"Could the contempt be purged?"

"No," responded Reynolds, "not through one; it might possibly be done with two, while I feel I could manage it with three. Have you got that number?"

"Yes."

"Well, then, keep one and give me two."

This was done, whereupon (the chancellor's eyes being upon them all the time) Reynolds bit into one and made a motion to toss the third to the chancellor. His honor put himself into a position to catch and did catch.

Whereupon Reynolds said aloud: "The contempt is purged."

Mr. Reynolds was arguing in Chancellor Walworth's small room at Saratoga, and was not far from a man who had got to sleep and was snoring with his mouth wide open. Reynolds managed, while coldly pursuing his argument (he never laughed or outwardly moved his facial muscles), to drop tobacco in the sleeper's mouth, which waked him up almost choking and seeing a man next to him grinning and believing this person to be the aggressor, the somnolent gave him a blow which tumbled him off his chair. Although the chancellor had been witness to what Reynolds had done, he was obliged to take notice of the man's contempt of court, in thus striking another within its verge. A few words were the light punishment.

Several years ago, Mr. John Griffin, of Alleghany County, was elected first judge. He was a tall, large, coarse man, of little education but of strong mind and good sense. On one occasion, the lawyers were arguing a case before him and his associates. After listening to them a long time, the court decided a question, when the lawyer against whom it told went on to argue it over again, to convince the judges they ought to reverse their own decision. The judge remarked to him once or twice that the point had already been decided and manifested an indisposition to listen

to further discussion. But our brother of the law, nothing daunted, persisted, although he was again several times checked by the court. At last, becoming somewhat impatient and irritated, he remarked it was really unpleasant to stand there wrestling with the opinion of the court. To which the judge replied :

“ Then sit down, you fool.”

Judge B——, of E—— County, was one of the side judges of the old Court of Common Pleas, a very good sort of man and a respectable merchant, but considerably elevated by his position on the bench ; and on the resignation of the first judge, his self-esteem was by no means decreased by his becoming the presiding judge. While holding court on one occasion, a Mr. T——, who has since become somewhat eminent in his profession, tried his first cause, and elicited the unanimous commendation of the whole Bar at the ability he displayed. A question of some importance in the result of the cause arose during the trial, and was, after an able argument on the part of our young friend, decided by the presiding judge against him.

This aroused his young blood ; and in the excitement of the occasion he remarked, in the hearing of the judge, “ *that he was astonished at such an outrageous decision.*”

Judge B——, much excited at the remark, called the young man to an account ; and required of him an apology, which it was arranged should be made at the opening of the court in the afternoon or in default the court would commit him for contempt.

Mr. T—— was very much alarmed at his position and called on his friend John R——, celebrated for dry humor, who told him to give himself no further uneasiness, as he would help him out. At the opening of the court Mr. T—— was called upon for his apology.

The tall, gaunt form of John R—— arose. He said he had been requested by his young friend to address the court in his behalf ; and, after commenting on the talents and ability displayed by his young friend in the trial of the cause, his youth and inexperience in the ways and customs of courts and of this court in particular, remarked, “ That had his young friend been as familier

with the practice and decisions of this court as he (Mr. R——) was, he would have ceased long ago to be astonished at any decision your honor might make.”

The court, not up to the counsel's double meaning, expressed itself satisfied.

“I don't know about that, I don't know about that,” exclaimed one of our New York judges, interrupting Charles O'Connor.

“I see your honor don't know, but I do,” was the reply.

With this we may be allowed to add the following :

Clayton, who was lord chief justice of the King's Bench in Ireland, knew very little of the laws of the country in which his judicial duties lay. He observed to Mr. Harwood, a barrister eminent alike for his learning and his wit, “the laws are so continually clashing that, upon my word, at times I don't clearly understand them.”

“Very true, indeed, my lord,” replied Harwood, “*that* is what we all say.”

Judge Bosworth, of the New York Superior Court, was presiding. The case before him was one of sea insurance. Ex-Judge W—— was counsel on the one side and Mr. Alexander Hamilton on the other. A question was as to the admissibility of certain documents connected with *average* which had been received from Liverpool. The judge decided to receive them to a certain special extent. W—— excepted, took a pen and asked the judge to go again over the ground on which he received them ; and this his honor began to do, when W——, not being able understandingly to follow the judge, made a somewhat expressive face, threw down his pen and exclaimed :

“Well, I declare, judge, I cannot comprehend it !”

Judge Bosworth, with his imperturbable manner, replied :

“I don't know that I can help that, Mr. W——.”

This caused more than a titter, in which the latter almost immediately managed to join.

In a village in Central New York, during a protracted trial, which elicited a good deal of feeling, Mr. R——, one of the counsel engaged, was somewhat intoxicated, and in response to an allu-

sion of the opposite counsel to his condition, caught up an inkstand and hurled it at his head. The court immediately committed R—— for contempt and imposed a fine of twenty-five dollars.

Mr. R—— (in explanation or expiation).—"If the court please, I confess myself guilty of a gross breach of decorum, but I hope—"

Judge.—"Thus far, sir, the court agrees with you cheerfully; but your remorse comes too late, for you stand convicted of a contempt of court."

Mr. R—— (meekly).—"I hope the court will spare me the disgrace of a fine, for I was under the influence of—"

The Judge (impetuously).—"Sit down, sir, you are already fined."

Mr. R—— (persistingly).—"I was as I said under the influence of strong drink, and I think that circum—"

The Judge (indignantly and by way of a closer).—"Sit *down*, sir! Does the counsel consider this court a mere quack doctor, who does not know what ails a lawyer without having any thing to do with his tongue?"

W—— was wont to imbibe. On a certain occasion the duty laid upon him of arguing a *certiorari*. He had, prior to coming into court, partaken of a favorite drink and when he attempted to rise from his seat for the purpose of commencing his motion found the gravity of his body rather too great to overcome; but after repeated trials he at last gained his feet. The presiding judge discovering his situation and inability to express himself understandingly, said to him—

"Mr. W——, sit down; you are drunk."

To which remark W—— slowly replied—

"That's a fact, and it's the first correct decision your honor has made this term."

Lawyers are supposed to be like prize-fighters who—

"First shake hands before they box,
Then give each other plaguy knocks,
With all the love and kindness of a brother."

Sometimes, however, the appearance of earnestness changes to personal collision.

“Here followeth (*exempli gratia*) a story.”

In the discharge of his duties as circuit judge, John Worth Edmonds was always fearless and independent. An instance of this was exhibited at the anti-rent trials in Columbia County, in September, 1845. The counsel employed in those trials had been engaged in the same cases at the circuit in March preceding and had then manifested no little combativeness. They displayed the same warmth before Judge Edmonds and carried it so far as to come to blows in open court. The offenders were gentlemen of high standing at the New York Bar and personal friends of the judge and both apologized for their contempt of court. But his honor with great promptness committed them both to prison ; and adjourned his court with the remark that it was not his fault that the course of public justice was thus interrupted. Perhaps none regretted it more than the parties themselves, for their manners generally were particularly courteous. It is a gratifying fact that it did not afterwards disturb the personal good feeling which had previously existed between the parties engaged in this momentary misconduct. The event attracted much attention and was noticed by the English press as “evidence of advancing civilization in America.”

The late death of Mr. John Van Buren has so plainly brought back in newspapers the fact that this gentleman was one of the advocates and the late Mr. Ambrose L. Jordan the other who got into the above personal collision, that we may as well couple their names with it ; and add that Mr. Van Buren, being attorney-general, and sensible of the impropriety of his conduct, tendered the resignation of his office to Governor Silas Wright. The latter, acting under the advice of the presiding judge, refused acceptance and Mr. Van Buren completed his term of office.

At a Bar meeting in New York, called to do honor to the memory of John Van Buren, the above incidents were sketched by ex-Judge Edmonds with the addition of the following matter. On the day the trial began Mr. Van Buren had brought Judge Edmonds an invitation from his father, the late President Martin Van Buren, which invitation had been accepted. “The sheriff

then seized and separated them. The court immediately announced that both these gentlemen should be imprisoned for twenty-four hours. Mr. Van Buren immediately rose and with remarkable coolness made an apology, adding—

“ ‘What could I do under that coarse insult, what could I do? I acknowledge I have violated the decorum of a court of justice and am subject to punishment. I pray that such punishment may rather be a fine of five hundred dollars than twenty-four hours in jail; and I ask that the court may not interrupt its business, but let it go on and impose a fine.’

“The counsel on the other side made his apology. The court was inflexible. I said—

“ ‘No; there must be an example and nothing could be better than to show the supremacy of law in a community where men had to be armed to permit the administration of justice to flow undisturbed.’

“The two gentlemen were committed. The next morning, the twenty-four hours having expired, they came out and walked into court. Each took a seat at the Bar table. The trial continued until eleven o'clock, when the usual hour came for a short recess. Up to this time no word had passed between either of the counsel and the presiding judge except what transpired in the course of the trial before the audience. Then Mr. Van Buren, moving up to the bench in his usual *nonchalant* manner and leaning his arm leisurely thereon, in low tone of voice said to me, ‘he hoped the court had slept well last night.’

“I said—‘Yes; I was not aware of any thing to disturb its slumbers.’

“ ‘I didn’t know,’ observed Mr. Van Buren, ‘that its conscience would, under the circumstances, permit it.’ And then he added— ‘I suppose our agreement to visit the old man is good?’

“The visit was not made. It would not have done under the circumstances. The father subsequently told me he appreciated the motive which caused me not to come and also approved of my action on the occasion.”

The anti-rent trials to which we have referred, made a sensation in

the State. The excitement extended through six or eight counties where the Livingston and Van Rensselaer manors extended ; and a very general combination was formed to resist the service of all legal process in behalf of the landlords. The insurgents were organized and armed and carefully disguised, calling themselves Indians and led by men assuming Indian names. The conspicuous leader among them was an educated physician, who named himself Big Thunder. Troops were called out to enforce the laws. After one abortive attempt Big Thunder, on a second trial which lasted over four weeks before Judge Edmonds, was convicted and sentenced to State prison for life. The negro minstrels were just then coming in vogue and one of their witticisms was—

“ Why is Judge Edmonds a greater man than Dr. Franklin ?”

“ Because Dr. Franklin bottled lightning, but Judge Edmonds jugged Thunder.”

Old Judge Swanton of the New York Marine Court, some forty years ago, was an uncouth, unrolled and ordinary Irishman. The then crier was Casey, also from the first gem of the sea, blunt and about on a par with the justice. The latter was noisy, fussy, fidgetty and constantly calling out—

“ Hish, hish, Casey! what’s that buzzing? what’s that buzzing? Who’s making a n’ise? who’s making a n’ise?”

“ Is it who’s making a n’ise?” responded Casey, pettishly, “ sure and it’s your honor.”

Below the bench from which Judge Swanton fulminated his absolute wisdom, was a remarkably small and low apology for a Bar-table. The judge could hardly see the heads of the lawyers. A cause was going on. W——, an irascible and rude attorney, gave, in a somewhat low tone, his opponent the lie, who, as if aside and in a lower voice, said—

“ If you say that again, I’ll wring your nose.”

It was repeated. Whereupon the nose was violently treated.

All this was so quietly and suddenly done that neither justice nor his man Casey witnessed it. The assailed gave the judge to understand he had been insulted, stated what had been the violence and appealed to his honor. Swanton, in his peculiar man-

ner, declared he had not witnessed any assault at all at all. The assaulted lawyer reiterated.

"Mr. Casey, Mr. Casey," called out the judge, "did ye see Mr. Talmadge twake Mr. W——'s nose?"

"Not a bit of it," replied Casey.

Whereupon the justice summed up with—

"There, Mr. W——, the evidence is intirely agin' ye: the fact is ye must have pulled yer own nose."

The free way in which trials would take place in our upper counties, some sixty years ago, is thus illustrated by Mr. Levi Beardsley, in his *Reminiscences of Oswego County*, p. 184 :

"I had agreed to go ten or twelve miles to prosecute a trifling suit and was to be opposed by a noted pettifogger who, although ignorant and without character, had acquired such an influence over the justices and jurors of his neighborhood that he generally gained his suits whether right or wrong. He was dirty, ragged and slovenly in his appearance and was known as 'the black sloven.' I had never met him in court; but had been informed by those who had that he was not only personally abusive in speech, but, with young men, would swagger, browbeat and threaten to flog them, though an arrant coward if manfully withstood. On appearing before the justice, issue was joined and a jury called—the summoning of whom among the hills would take all the afternoon, which would require the trial to be had in the night. This was precisely what the witnesses and jurors expected and desired, for it would afford an excuse for wasting the night in fun and frolic, if nothing else. The jury were finally impannelled and sworn; and the justice, who had a distillery hard by, took his seat by a long table, a little after dark, the jury sitting near him. It was customary then to treat the court and jury as the trial proceeded; and a party who should be so wanting in good sense or generosity as to forget or refuse to enlighten the minds of the jury by a good substantial drink before a constable was sworn 'to keep them together without meat or drink,' would be very likely to lose his cause.

"In the present case, both parties were determined to 'con-

ciliate' the justice and jury, so they sent to the distillery for whiskey and clubbed together to pay it. They took a drink all round and the bottle was placed on the table, to be used as the trial progressed, whenever it should be necessary to solve an intricate question. My antagonist and myself were standing on opposite sides of the table ; and, as the trial proceeded, he began his objections to certain testimony and called on me to produce law to show that it could be legally introduced. As I was twelve miles from home and in the woods too, he was very sure that I had no law-books with me ; and, on my asserting our right to introduce the testimony, he became very rude and insulting and said it was a common thing for young men who were upstarts to come out among honest farmers to deceive and mislead them. Then he remarked that they 'wanted none of my butterfly stuff and unless I kept a civil tongue in my head, he would slap my face.' This was about as I had been told he would treat me, so that I was not taken by surprise. As soon as he said he would slap my face, I reached across the table, seized him by the shoulder and, with a good smart jerk, pulled him on to it, so that he lay across it, where with one hand I held him. The court and jury got up, but peace and quiet were soon restored. As we were about resuming the trial, he called me on one side and in a very friendly, good-natured manner, asked me if I wasn't a Mason. My answer was not very Masonic, for it was in Yankee style, by asking him a question, 'What if I am ?'

"He then said, in an undertone—

" 'I have been found worthy of a place in that ancient and honorable order and have understood that you belong to it. You are under the tongue of good report and I have a high opinion of your character.' He continued : 'You must not notice these little altercations. If we did not have them, these fellows would think we did not earn our money, but among gentlemen they are overlooked, of course'—laying special stress on the word 'gentlemen,' as if, by possibility, it could attach to himself. He then told me to go on with the trial and we should have no difficulty—that he had no doubt my client was in the right, but his own was a stub-

born, unreasonable fellow and he must make the best defence for him he could. The further proceedings were very amicable. He behaved well and treated me with civility; and towards morning the jury rendered a satisfactory verdict for my client. The court, jury, witnesses and attendants seemed well gratified with the night's performance, as the whiskey-jug had been kept replenished and they had been treated to the altercation and collision between the counsel, which seemed to delight them as much as the copious drafts and inspiration derived from the jug of whiskey. Nor were they displeased that the old greasy pettifogger had the worst of it. And I am sure he was not, as it seemed to make him my fast and devoted friend, which, for several years, he manifested by sending me many clients. I did not hurt him, nor did I intend to do so; but felt quite sure I could frighten him, though he was much larger and heavier than I was—and in this respect I succeeded to admiration. At last, he was indicted for some small alleged offence—nothing less or more than perjury—and employed me to defend him. Before the indictment was ready for trial, he concluded to give leg-bail and show a light pair of heels; and this was the last I ever saw or heard of my former competitor and subsequent client; and thus end my recollections of 'the black sloven.'"

We cannot forbear attaching the following as a pendant to the above, for although it may really not apply to personages of our own State, still there is so much similarity between the black sloven and Mark S——, that we feel sure our readers will laughingly thank us for doing so.

Mark S—— used to try small causes in justices' courts. His principal *forte* and that on which he prided himself most, lay in the examination of witnesses. He boasted he could worm truth out of a stone. In consequence of some rather sharp practice, Mark had reason to suppose that the district attorney was preparing an indictment against him for perjury and so he disappeared from his accustomed haunts, "on a little law business," as he afterwards said, when closely interrogated, sojourning on what was called *Snipe Hill*, a sort of *Alsatia*, being the same place of which some-

body said the inhabitants had broken every law, every Sabbath and every sheriff's head for the last ten years. After his return, he was one day trying a cause before a justice, and a boy was called as a witness and to whom Mark objected, on the ground of his simplicity; that he was "non-compost," as Mark sagely remarked and he insisted on *voire dire*. The boy was accordingly sworn preliminarily; and Mark assumed his sternest face and looking at the boy as though he would eye him into a fit,

"Boy," said he, "who made you?"

"The Lord, I thpothe," lisped the boy.

"Who made *you*?"

"Never mind who made *me*," said Mark.

"Folks say you are a fool; how is it?"

"Do they?" responded the witness; "thath no thign. Thome folkth thay't you won't cheat. Folkth *will* lie, you thee."

"Boy! no impertinence," said Mark, glowering fiercely, as the justice checked the subdued giggle that ran around the room. "Suppose you were to commit perjury; do you know what that means?"

"Yeth, sir; thwearing to a lie; juth what *you* did lath winter; ain't it?"

"The witness is clearly incompetent, a rank fool," appealed Mark to the court.

But the "court could not see it." And Mark proceeded:

"Well, suppose you were to commit perjury and swear falsely, where would you go to?"

"To Thnipe Hill, I thpothe," drawled out the boy, "where you went lath winter!"

The boy was admitted as a witness.

John Anthon had some professional matter with a brother lawyer now dead, named *Porter*. The latter got angry; and Anthon, at last, also becoming riled, exclaimed, "Oh, for goodness sake, do bottle yourself up; for, if there be any thing in the world I dislike, it is souer *Porter*."

High crimes by lawyers are rare.

We have, however, never come across a more heartless case of

home misconduct on the part of a professional man than the one we now detail :

Lucius E. Bulkeley was an attorney and counsellor of New York city. He was a married man and had a son, a child of about four years' old. In October, 1856, his wife, with his consent, left New York on board a steamer to visit her mother living in California. Her husband accompanied her to the ship and spent the last hour before its departure in apparently friendly and affectionate conversation with her on board. He expressed his gratification that an opportunity had offered for her to visit her mother. When the order was given on board for "all persons not bound to California to go ashore," Bulkeley was seen to kiss his wife and then hand her a package. This package was a small tin box, closed, covered with paper and the paper sealed. At the time of handing this package to his wife, he informed her the box contained a present for her mother and also a note for herself, requesting her to be careful of the present and to deliver it safely to her mother. After Mrs. Bulkeley had got to sea, she unsealed and opened the tin box and discovered a summons directed to her as a defendant and in which her husband was plaintiff, filled out in her husband's handwriting and signed by him as his own attorney. The box also contained a letter to her, in which she was informed the action was to obtain a divorce and he had witnesses by whom he could prove the necessary facts. The box did not contain any present to his mother, nor any thing but the summons and letter. At the time of opening the box, the wife was beyond the limits of the State of New York. When she arrived at Aspinwall, she made an effort to return ; but was then in a condition of body and mind which made her friends remonstrate against it ; nor had she the necessary pecuniary means to obtain her passage back. Her tickets were taken and baggage checked through to California. She could find no friend or acquaintance who was returning to New York. She consequently went on to California, but came back in January, 1857. She did not see her husband until a decree of divorce against her had been obtained. He gave her a copy of it. He would not allow her to see her child ; and declared (in case s. e.

should attempt to set aside the decree) he had witnesses under his control by whom he could blast her character ; and he otherwise threatened her. He also made two propositions : one was, if she would keep secret what had transpired about the decree and raise him five thousand dollars, he would give her the custody of her child. The other, that if she would raise for him fifteen hundred dollars, he would get from the clerk of Saratoga County the record of divorce and thus obliterate all evidence of its existence. She returned to California for aid and obtained there necessary corroborating affidavits to move to set aside the judgment of divorce. There was also connected with the moving papers an unqualified denial, on her part, of the charges which had been made against her.

Bulkeley had the hardihood, with an associate counsel, to appear in person and oppose.

The motion came before Judge Potter ; and it is gratifying to read how well, nay, nobly, he sustained the dignity of the Supreme Court of the State and this wife.

His honor, after showing how the service of the summons was not only illegal, but also little short of an insult to the intelligence of the court, expressed himself thus :

“ This motion might be decided upon the views above expressed, without reference to any other of the moral aspects which the case presents. But the court would feel that they fell short of the discharge of their whole duty, if they failed to take judicial notice of the fact, that the plaintiff is an attorney and counsellor of this court, and, therefore, one of its officers ; that by virtue of the rights and privileges which this position confers upon him, he has committed a gross abuse of the process and authority of the court. He has used the privilege which his license to practice confers, in order to accomplish his own private objects and purposes. By a secret and cunningly devised stratagem, he has decoyed a defenceless woman into a condition of entire helplessness ; and while so ensnared, has perverted the use of the process of the court to the commission of a most unhallowed fraud upon her rights and under circumstances of unparalleled heartlessness and cruelty. Nor is

the moral aspect of the case relieved by the fact that the victim of this injustice was the wife of the plaintiff, to whom, at the solemn altar, he had pledged his holiest vows to love, to cherish and to protect and that she was also the mother of his offspring. It is sufficient for the court to know that the act which he calls the service of a summons and upon which he based his decree was, in no sense, a legal service, but was a fraud imposed by him, not only upon the defendant, but also upon the court and deliberately entered into its solemn records. If this pretended service was made in the manner detailed in the affidavits, his clerk, by whom it was effected, in swearing to due service, was guilty of most deliberate falsehood, if not of legal perjury ; and the plaintiff, who doubtless planned the scheme and who, knowing its iniquity, availed himself of its uses, is responsible to the charge of moral, if not legal subornation of perjury. To tolerate for one moment an act so flagrant and wicked, to be consummated by one over whom the court can exercise its control, to pass unrebuked, does not comport with the idea of a pure and honest administration of justice. Such a reproach, while in the exercise of the power with which I have been invested, it shall not suffer at my hands. The affidavit of the service of the summons by the clerk of the plaintiff was made in the city and county of New York. To a grand jury of that county I commit the consideration of this paper. The affidavit of the plaintiff upon which he obtained the order of reference, in which he coolly states, 'that no copy of an answer to the complaint in this action has been received, nor has the defendant entered any appearance in the action, nor has she, or any one in her behalf, demanded a copy of the complaint and deponent was personally present and saw the summons herein served on defendant,' was taken before the clerk of Montgomery County, to whose grand jury I recommend the proper attention. To the general term of the Supreme Court, in whose immediate district this attorney and counsellor conducts his chief practice, I call attention to this officer of the court. The service of the summons and all subsequent proceedings in the action, including the judgment and decree of divorce, are set aside, with costs."

This man was the personification of effrontery. When once before Judge Duer of the Superior Court of New York at Chambers, there was a paper he had with him, which the counsel opposed claimed should be produced. Bulkeley, immediately before the eyes of the judge, tore it in pieces and threw it upon the floor. His honor told him, if he did not instantly pick up the pieces and forthwith have them properly put together and handed in, he would commit him to close custody.

Judges are indelicately approached by side letters from suitors and sometimes through lawyers; and are subject to anonymous communications. Judge Edmonds told the author he had, during his judicial career, received several in which his life was threatened, the major part of them having come to hand when he was presiding in the anti-rent cases.

This same judicial functionary was called on at his residence by the wife of a man named Drury, who was charged with a crime and whose case had been removed from the New York Sessions to the Court of Oyer and Terminer. The woman handed the judge a letter, and he, on opening it, discovered two one hundred dollar bills; but the contents of the epistle had no reference to them, such contents simply referring to the case and Drury asking the judge to let him have a speedy trial; but his honor could guess why the notes were enclosed. He thought it as well to call in his daughter as a witness, and then said to the woman—

“I give you no answer to this letter.”

His honor wrote to the then mayor, Mr. Caleb S. Woodhull, enclosing the \$200 and Drury's epistle and leaving him to do what he, as a magistrate, pleased with the money. The mayor made the matter sufficiently known for the then district attorney to go before a grand jury; but, on Judge Edmonds being summoned before them, he suggested that so far as he was concerned he had no desire to prosecute as he was, certainly, in the community, far above the chance of any imputation sticking to him in relation to these two hundred dollars and probably if Drury were prosecuted he had managed preliminarily sufficiently (and it was gathered afterwards that he was ready with just such an explanation) to show

he had written two letters to different persons and had put a remittance into a wrong one. So the matter dropped ; but the mayor held the money. Drury got free of whatever criminal charge there was against him ; and he had the modesty to ask Mr. Mayor for the \$200, which, as he suggested, was to have gone to a correspondent other than the judge !

Lord Hardwicke received a letter from Thomas Martin, of Great Yarmouth, mentioning that a bill in chancery was threatened to be filed against him and enclosing a bank-note for twenty pounds, of which he desired his lordship's acceptance. Martin was ordered to show cause why he should not be committed ; and afterwards, in consideration of his submission to the court and asking pardon and of his being at the time Mayor of Yarmouth and as the public business might suffer by his imprisonment, he was discharged upon payment of the costs. The bank-note was ordered to be applied to the relief of prisoners in the fleet. (2 *Russell and Milne's Reports*, 674, note a.)

Coke lays it down as a rule that a judge must not pay a bribe or take a bribe.

It is pleasant in connection with the idea of attempting to bribe an officer of justice, to quote from Sir John Reresby's statement of the Count Konigsmark and others for murder in England, 1689. Sir John, as a magistrate, had taken infinite pains to bring the parties to justice :

“ A few days afterwards Mons. Faubert, who kept the academy in London, came and desired me to put him in a way how to save Count Konigsmark's life, insinuating to me that, as he was a man of vast fortune, he could not make better use of it than to support his own innocence and shield himself from the edge of the law in a strange country. I told him that, if the count was really innocent, the law would naturally acquit him, as much, though a foreigner, as if he was a native ; but that he ought to be cautious how he made any offers to pervert justice ; for that it were to make all men of honor his enemies, instead of gaining them to be his friends. This was one of the first bribes of value ever offered to me, which I might have accepted without any danger of dis-

covery and without doing much for it; but my opinion has always been, that what is so acquired is no addition to our store, but rather the cause of its waste. *Male parva male dilabuntur* (things ill-acquired are as badly expended). I, therefore, rejected this now, as I had done others before, and as I hope I shall always do for the time to come."

General Santa Anna of Mexican notoriety lately turned up in the city of New York, where he was sued and held to bail in a large amount. The matter came up before Judge George G. Barnard at Chambers. When the case was named, the judge said he had a wish to hear it, on account of his receiving a letter from some Mexican, which intimated in the direction of an offer of money to discharge the general and the writer had mistaken the present for a Mexican court. The letter was shown to the counsel employed in the suit; and the following is a copy:

NEW YORK, Friday, August 30.

To Judge Barnard:

MUCH ESTEEMED AND EXCELLENT SIR: I have desired to speak with you for my good friend, General de Santa Anna. He has much trouble in law business every day. To-morrow, before you, will be one instance. That you should make to my distinguished friend a consideration, I will tell you I can speak for him as to the good terms he would entertain with you.

The accessibility to such you will see in so much that: Montgomery is a poor "rebel," who did your country great badness, and General Santa Anna is rich and liberal—that the General desires to pass from this city at a coming moment—the cold approaching; that he is harassed by law, and fears more to command, is a very great stranger here, and bail is difficult and expensive to him; his present bail a difficulty to him, too—that these to your consideration will make your own terms his pleasure. To this object, first address your compliance to one who is your servant and well-wisher, and at present only—

J.

Grammercy Park Hotel.

Newspapers are not always reliable even in matters of mere anecdote. The following, as it appeared in a New York journal of the day, would answer very well for our work. There was the case of *Comstock v. White and Moore*, in the Supreme Court

of the State, wherein the plaintiff charged the defendant with having counterfeited the labels and trade-mark of a patent medicine known as Indian Root Pills and obtained an injunction against the defendants.

The matter had been in litigation a long time in one form or other ; and the story runs that Mr. Anthony R. Dyett, of counsel in the cause, arose in the Supreme Court Chambers before Justice Roosevelt to make a motion for the dissolution of the injunction, when the following dialogue occurred :

Justice.—“ Mr. Dyett, I wish you would favor the court by postponing the motion until some other justice is sitting at Chambers. I am tired of being dosed with these pills.”

Dyett.—“ Well, if your honor please, I would do any thing in the world to oblige the court, but my duty to my clients, in this instance, forbids I should longer delay this motion, the most important that has ever been made in the case and which, if postponed, may greatly distress my clients.”

Justice.—“ Mr. Dyett, if your clients are in great distress, I would advise them, in the first place, to take some of the pills ; and if that does not bring relief, then I should recommend them to change their Dyett.”

Now, as we have before intimated, the above is a very good story as it stands ; but the facts, as gathered from Mr. Dyett, are these :

The motion which he was engaged in was made against his clients, with a view to have them punished for an alleged contempt in violating the injunction. The plaintiff was pressing the motion ; and Mr. Dyett, in answer to a very energetic speech by the plaintiff's counsel about the delay and damage caused by the conduct of his clients, quietly remarked to the judge that if the Indian Root Pills possessed one-half of the virtues ascribed to them by the plaintiff, they themselves could readily purge the contempt.

CHAPTER VII.

COUNSEL AND CLIENTS BEFORE COURTS AND JURIES—JUDGE CHARGING JURY—FINAL DECISIONS AND VERDICTS.

AMERICAN jurors are not influenced by eloquence. They like it as they do fireworks—looking and listening and pleased at sound and gyrations and colors; but they generally act outside of display.

Whether it is this which makes the advocate of the present day seldom lay himself out for pathos, certain it is, that little more than matter of fact and the playing with it boldly are now used before the courts of the State of New York.

Even if eloquence were the staple, our work is not designed to be filled by it.

We are for quips and cranks and wanton wiles—for the little match which ignites and lights up.

To an unprofessional mind, the meaning of the word *demurrer* may be unknown. It amounts to a mere declaration that a party will not proceed until the court itself shall say, whether the proceeding of the opposite side raises a sufficiently legal question to be answered or not. Some years ago, when hogs ran about the streets of New York like cattle in a pasture, the Corporation authorities began to take measures by impounding. This brought on actions by owners of the swine, in which the Corporation were generally pounded. There was a case where elaborate pleas were interposed. These were met by a demurrer. It was before Justice Meigs. On court day and when the demurrer should have come up, his honor called the case. Both sides answered "ready." The judge ordered a jury. It was intimated, there could be no trial at present; that a demurrer had been interposed and this

must first be argued and the bench decide on it. Nothing could convince the court, in the shape of Judge Meigs ; he was as immovable as Fort Meigs. The jury, he said, was to pass and should pass upon the law and the facts. So, a jury was impaneled to try, in fact, a demurrer which has no issue ; and they did so try,—bringing matter to an issue by finding a verdict for fifty dollars.

A demurrer was interposed in the New York Superior Court to a Replication which Mr. F. S. C——, of the New York Bar, had filed to a plea. But this Replication had not met the cardinal averment in such plea. On argument, Judge Oakley suggested that he, Mr. C——, had not, in his Replication, met this averment. “I know that, your honor,” observed our astute counsel. “Well,” asked the judge, “how, then, can you expect your Replication to stand?” “Oh, your honor, mine is a Replication in confession and *avoidance*, and I studiously *avoided* answering that !”

Judge S——, of the Marine Court of New York and afterwards a Recorder of the city, one of the “soft Recorders,” never disturbed his own measured equanimity by legal study. Henry M. Western was retained to defend a case in the Marine Court, but he was not ready to try. Judge S—— refused to allow an adjournment, although Western tried his best or worst to accomplish it. On failing, he threw himself into a seemingly ungovernable rage of words ; and, at last, striking the Bar-table furiously and staring daggers at the judge, said, “that as he was driven to the serious alternative, he must and should demur !” “Demur,” observed the judge, raising his spectacles to his forehead, and half-cowed, “demur ! what do you mean, Mr. Western, by demur ?” “I mean what I say,” exclaimed the further furious Western. “What is demur, Mr. Western ?” “Demur,” roared out our rampant counsellor, “means”—and here he again brought down his fist—“means, *stop* ; and now, sir, you will go on at your peril !” “Oh, well, Mr. Western, if that is what it means, of course we’ll adjourn the case to any time you wish.”

We must be allowed to go into Massachusetts, to tell another story about Demurrer. .

A nervous client had come several miles to the place of trial with a host of witnesses and was anxiously eager for battle. Before the cause was called, a demurrer had been put in ; and the plaintiff's attorney informed his client that he might go home with his witnesses, as there would be no trial. The latter was very much dissatisfied ; he had come many miles ; been at great expense ; had paid all his witnesses and now he wished to use them ; they must earn their money. To all this the attorney gave him no satisfaction ; and he soon came to him again. "Squire," he said, "*how* is my case decided ? What has become of it ?" "Why, my dear sir, it has been *demurred*."

The client puzzled over this for an hour and finally concluding it was beyond his depth, informed his witnesses that they might go home ; but just before they departed, he called his attorney out of court and the following conversation ensued : "Squire, what is a demurrer ?" "My good fellow," was the reply of the attorney, patting him on the shoulder, "God never intended that you should understand what a demurrer is. Go home and see your wife and children." (6 *Boston Law R.*, 475.)

Some of the counties on the banks of the Hudson were originally settled by the Dutch. Their language is very generally spoken there to this day and their idioms creep into their English. One of the peculiarities is to use *into* for *in*. A lawyer of this class, trying a cause against a constable for selling some pork that was exempt from execution, feelingly told the jury that "a barrel of pork goes a great way *into* a family." At another time, the same lawyer, trying a horse-cause, said of his adversary, "This old horse-jockey cheated this young and ignorant client of mine *into* that old, broken-down, heavey mare."

The late Mr. William Sampson's playful manner is well illustrated in the following sketch, from a trial of a man calling himself Doctor William Little, for an assault on his wife Jane, who, on being called to the stand, did "black as the night resemble."

The Attorney-General was proceeding in her examination, when Mr. Sampson proposed to shorten the trial by an admission of the assault ; but he undertook to show how a more tender or affec-

tionate husband nowhere existed and that his seeming incivility to his black spouse would appear, when the defence was known to have been rather a dissembling of love than an effect of misconduct. Wives were only admitted, he said, to testify against their husbands in cases of great enormity and when the weaker vessel was in danger and needed the protecting arm of the law. "Gentlemen of the jury," said he, "I perceive you smile, and I feared it would be so. You see, however, gentlemen, that we are serious. There are causes which present such strong contrast of light and shade, such powerful effects of *chiaro oscuro* that no words can heighten their imagery. But still, to every imagination, the subject may seem differently. Gentlemen, you do not perhaps know upon what foundation my client may have placed his choice ; and as to taste it admits of no dispute : every man must follow his own pleasure. That which seems black, in your eyes or in mine, may be exceedingly fair in his. The education of a physician is not that of a lawyer. He ranges through the wild field of nature and is not bounded by the narrow limits of positive institutions. He reads not in the books of authority, but in the great volume of nature. He knows by what chemical processes all colors may be produced. And if a late discovery can be relied on that Adam was black, a marriage in his family can surely disgrace no man. We are ready to dispute in due time and place and to maintain that neither philosophy nor religion has forbidden such mixture ; and having satisfied our conscience, we had no scruple in yielding to our passion. You are in amazement, gentlemen ; I did expect no less. You are all under the dominion of prejudice. You do not see clear. I shall be forced, I find, to reveal, in defence of my client, expressions intended only for love and privacy. I shall read to you a letter which no pen but that of a lover and a poet could have traced. It is dated on the 4th of June, and addressed to Mrs. Jane Little, after the unfortunate occurrence, and in these terms :

" ' I received your kind letter of the 1st of June and am very sorry to hear of your being unwell. I want my coat, pantaloons and jacket at Mr. Simeon's, as I have had nothing to lay on but my clothes since I have been here.' "

"Is not this repentance, gentlemen, even to sackcloth and ashes?"

" 'You write that you'll not appear against me in court, which undoubtedly will be for the best, as I have not forgotten my marriage covenant. The unhappy situation in which I am involved by your hastiness and those that have persuaded you to it devolves on me the necessity of addressing you, which cannot fail of impressing your mind with an uncommon degree of seriousness, especially when you consider how both of our characters are stigmatized by our own imprudence.'

"Gentlemen, since these parties are so sensible of their own imprudence let us not widen the breach, but pour balm into their wounds; and let not the records of this court transmit to all posterity the quarrel of two who loved so dearly.

" 'You may, my dear Jane, assure yourself, upon the testimony of your dear husband, who has been taught by the most bitter experience that were our disappointments and perplexities known which this embargo involved us into it would extinguish or at least mitigate the keenness of a reflection that we both must to eternity endure.'

"You see, gentlemen, although these parties appear before you like Lord and Lady Racket, yet their case is different. That was a quarrel three weeks after marriage and for a game of cards. Here is a serious and public grief; that villainous embargo that destroys the best of tempers and sours the milk of human kindness. It perches on the merchant's desk and stares him in the face. It is in our beds and in our kneading-troughs. It is in our dishes and our goblets. I swear I never railed at it till now. Perish commerce, but let connubial love be undisturbed.

" 'Let no one be ashamed of suffering for what is his demerits and, like Job, be an example of patience. The sufferings of our blessed Saviour, who suffered for us, suffering beyond the knowledge and the most refined researches of human skill to delineate, are full of mercy and examples to follow with all patience. Certainly that the feelings of our hearts teach us how possible it is for one person to love another and have respect for every thing belonging

to either. Do not mothers show their love for their darling child when dead by keeping its hair and setting it in costly rings and bracelets? Do not all mankind pay a respect to the pictures of their deceased friends or near relations and other things that belong to them? This is universally the natural disposition of the human heart.

“The title of his love, of his diploma, the title of his rank and honor.

“‘I want my certificate I let you have that ever memorable Tuesday morning when you ran after me, when I came from Clarkson’s, the collector’s. Likewise the summons I had since I came here for me to attend the medical society, which I gave you here, etc.

“‘I have nothing more to observe. As I ever have may I still continue your affectionate friend and dear husband, WILLIAM LITTLE, M. D.’

“Gentlemen, it was thus that Petrarch would have written to his Laura. Who can say whether, had he been fortunate enough to possess her, he might not in some unlucky moment even from excessive love have beat her, particularly if there had been a vexatious embargo in his day, which made those who never before bestowed upon their wives but kisses and caresses give them blows? But oh! that husbands would learn in every case to know their duties and submit.

“‘I want my certificate.’ Meaning, perhaps, his marriage certificate.”

The counsel then, turning to the lady, asked her in a pathetic tone if she could be so black as to prosecute the man who doated on her charms? She replied, in an accent full of sensibility, that if the court would forgive she would love him more than ever. Mr. Sampson then desired him to offer her his arm, which she accepted, and called to the officer to make way for the family of Dr. Little. The manner in which this was done added strongly to the matter. The court and jury were constrained to abandon their gravity. The attorney-general, after an ineffectual conflict between mirth and decorum, was unable to interpose, and before

any order could be made the fond couple had disappeared in the crowd.

Not much is left on the books to show Mr. Sampson's talents ; but lawyers must admit this gentleman's research and learning on referring to an argument which was laid before Chancellor Jones in support of a bill for a divorce, filed on behalf of a girl under age on the grounds of abduction, terror and fraud. The facts were these :

In the afternoon of the 6th of January, 1825, Miss Ferlat, who kept a school for young ladies and whose excellent character was fully^{ly} proved, had called to take tea with Miss McLeod, her pupil, when about five o'clock a carriage came with a message that the Rev. Mr. Power, the priest of her church, desired her to call upon him. After some hesitation she determined to go ; but when she arrived at Mr. Power's he declared that he had not sent for her but that *Mr. Gojon* was then in the house, at which she expressed her surprise and unequivocally said she did not wish to see the latter. It appeared that Gojon had before requested Mr. Power to marry him to Miss Ferlat, which he had refused upon learning Gojon had not the consent of her relatives. Miss Ferlat now said she had not the least idea of marrying Mr. Gojon without the consent of her parents ; though with their consent she would. After this conversation she consented, at Mr. Power's suggestion, to see Gojon, to whom she repeated the same declaration. Gojon then suggested the idea of going to some house where her parents should not be able to find her until their consent should be extorted, which she refused ; and said she desired to return to the place she came from and did not wish Gojon to accompany her. He succeeded, however, in inducing her to get into a carriage with a certain Mrs. Matthieu and her daughter ; and he was observed by Mr. Power to give secret instructions to the coachman. Mr. Power testified that Miss Ferlat afterwards stated how, instead of going back to Miss McLeod's, as she had been promised, Gojon had taken her to the house of her former music-master, with whose family she was not acquainted ; that soon after she was seated a minister in his robes entered the room,

upon whose appearance she was so overwhelmed that she was taken out by the ladies present ; after she recovered herself they persuaded her to return and go through the ceremony : she did so in order to be able to escape to her friends ; and shortly after the ceremony she told Gojon she did not consider herself his wife. By Miss McLeod's testimony it appeared Miss Ferlat had returned to her about half after eight o'clock the same evening, apparently in great agitation ; and as soon as she was able to state the cause, she had narrated the circumstances substantially as above ; and more particularly that she had been decoyed to the music-master's under pretence of being brought to Miss McLeod's ; and that she had there given an apparent consent to the marriage ceremony from her fear of some compulsion or violence and with intention to escape to her friends, to whom she did in fact return that evening from the house of Miss McLeod. She stated to Miss McLeod, in this conversation, she would never live with Gojon as his wife. The marriage ceremony was performed by the Rev. Mr. Schroeder, whose testimony was taken. It appeared Mr. Schroeder was led by a series of artful circumstances to suppose all was proper in the marriage ; though, from the subsequent inquiries which he made, he had no doubt the whole was a fraud. Gojon had since stated to him that Miss Ferlat had refused to live with him as her husband. The testimony of Mr. Ferlat and of Mrs. Ferlat, her mother, fully confirmed the preceding statements so far as their knowledge extended. A long letter from Gojon to Mrs. Ferlat was produced as affording manifest proof of a disordered mind. A record of a court in Pennsylvania, by which it appeared that Mrs. Matthieu, one of the confederates, had been three times convicted of burglary, was also produced. This record was offered as further evidence of the depraved character of the defendant's abettors.

The following lofty and well-applied remarks appear in Mr. Sampson's argument : " Can this court decree deeds to be canceled because of fraud or duress in obtaining them ; releases to be given or given up ; judgments to be vacated and punish the parties who dared to enforce them ; give relief for and against infants, notwith

standing their infancy; entertain the suits of husband against wife and wife against husband, notwithstanding their coverture; and yet turn a deaf ear to the voice of a mother worse than bereft and a daughter praying to be restored to the bosom and protection of her parents, to virgin innocence and maiden honor—of all which she has been robbed by practices of foul conspiracy—and where, if not relieved by this court, she must wear through life the loathsome chain of most unhallowed bondage—a chain more fatal than that by which tyrants have bound the living to the dead, for this would bind innocence to guilt in an indissoluble bond. Why is the law so anxious for the freedom and purity of that institution, invented in times of innocence and for the preservation thereof, that it will suffer no condition to be annexed to a spontaneous gift tending to clog its freedom, as that without the consent of such an individual a portion shall vest? Why, but because that mutual contract which is to last for life should be the effect of perfect freedom in the choice and will and lest any temptation should induce the joining with willing hands unwilling hearts; lest, when the temple-doors are thrown open to receive the vows of everlasting faith and truth, sin, shame and misery should enter in and, mingling with holy rites, profane the altar and pollute that contract on which the destiny not only of the living but of those yet unborn must depend.” (Ferlat v. Gojon, *Hopkins’ Chan. R.*, 478.) Chancellor Sanford annulled the marriage on the ground of fraud in obtaining it.

Anecdotes of Alexander Hamilton are few. “The following,” says a professional friend who furnishes them to the author, “are well-authenticated.” Hamilton and Theophilus Parsons were opposing counsel in the famous Halsey land case, tried at Hartford, Connecticut, before Chief Justice Ellsworth, in September, 1797. Parsons had been rather unusually nice in some of his distinctions. Hamilton’s satirical reply has passed into the traditions of the Bar: “I have known gentlemen to split a hair and I may have tried to do it myself. But I never before saw any one decimate a hair and count the pieces before a court.”

After this trial, Hamilton and Parsons with other members of

the Bar and leading county gentlemen, were invited by Mr. Wadsworth to dine with him at Hartford. At dinner, Hamilton inquired :

"Mr. Parsons, pray let me ask you one thing. The point I made" (giving it) "was suggested to me only after much study of the case and then almost by accident ; but I thought it very strong. You were fully prepared for it and gathered and exhibited the authorities at once and prevailed and I have had to submit ; but I was a good deal surprised at it. And what I want to know, is, whether you had anticipated that point?"

"Not in the least," was the answer ; "but so long ago as when I was studying with Judge Trowbridge, the question was suggested to me and I made a brief of the authorities, which I happened to have brought here with me and I found the books in Joseph Ellsworth's library."

This anecdote, observed our contributor, illustrates the reflective faculty of Hamilton's mind and "how the occasion sudden" is sometimes happily met by an intelligent abstract of a novel application of legal principle and the authorities which bear upon it.

Mr. L——, who was very proud of his gentle blood and inclined to carry his genealogical tree, like a Welshman, up to about the time of Adam, was opposed to John Van Buren in a case before the New York Court of Common Pleas. L——, in his address to the jury, said some exceedingly rude things of his opponent. When Van Buren rose to reply, he in the coolest manner possible—indeed, no person ever saw him out of temper—said : "The gentleman had made a speech worthy of his name and of those from whom he had descended ; indeed, I must give him credit for a display which has not been exceeded by any of his line since the days of his ancestor Balaam."

Mr. James W. Gerard, never at a loss before a jury, made capital even out of a mere writ of *capias* under which his client had been taken in an action for false imprisonment. "See, gentlemen of the jury : 'To the people of the State of New York'—there ! gentlemen, only see that ! '*the people of the State of New York !*'" It was not enough that the defendant himself was pur-

suing my client, but he must set the whole State to hunt him down!"

A friend informs us he was once going into court while Mr. Gerard was summing up a case and was struck with his more than usual earnestness and professions of a desire to deal fairly with it and not keep back from the jury any thing which might, at first blush, appear adverse to his client. He was close to the jury and it was perceivable he was coming to a point which he felt to be extremely delicate and to require the employment of his finest tact and adroitness to get over. The action was one of replevin. The sheriff had seized property; and the question was, whether the transfer of it to Mr. Gerard's client had not been made by an insolvent and in fraud of creditors. Mr. Nathaniel Bowditch Blunt was the opposite counsel. He sat quietly listening, but with an evident conviction that he was sure to win. One of the *indicia* of fraud was in the fact that the goods had been secretly carried to the store of Gerard's client at a very early hour of the morning. This was the point Gerard was endeavoring to get around. "Gentlemen of the jury," continued he, "they charge us with having carried these goods away at an unusual hour. Now, I must be candid and fair with you: we did remove them at five o'clock in the morning. But, gentlemen, what time of the year was it? The first week in September—hot, clammy, sultry weather! Is my client to be stigmatized and branded with the charge of fraud, because he is up with the lark and at his business with the rising of the sun? Will you, gentlemen, deprive him of his property because he chooses to do his work in the cool of the morning, instead of under noonday heat in that most oppressive of all seasons the first week of September? If, instead of sweltering in his bed, like the counsel on the other side, he is up betimes, will a jury of his countrymen convict him of a fraud?" Mr. Blunt, by this time, was becoming restless—munching, as was his wont, a toothpick vigorously. "I can tell the counsel," broke in Blunt, who lived some miles from the court-house, "I took my breakfast and was at my office at the time he refers to and long before he was out of his blankets." "Well, then," observed Gerard, turning to Blunt

with one of his most winning smiles, "if you are so alert yourself, why will you not allow others to be equally so!" The effect of this was irresistible.

Gerard was trying an action involving a right of way which his client claimed through the lands of the defendant. Mr. James T. Brady was of counsel for the latter. There was a diagram used; and Gerard was explaining to the jury where his client had a right to go.

Mr. Brady.—"You don't mean to say, Mr. Gerard, that the plaintiff has a right to go in this direction?" pointing with his finger to a line which had been traced upon the map.

"Certainly I do," replied Gerard.

"Why," said Brady, impulsively, "you might as well say I have a right to come into your house as often as I please!"

"So you have, my dear fellow," exclaimed Gerard; "I have often invited you, but you never would come. Won't you come and dine with me to-morrow?"

An old playmate of Mr. Gerard's told us, that when the latter was about out of his studentship, he and his companions would move around during election times. Gerard was always desirous and ready to Demosthenize. And it was understood among them that whenever he got up to speak, his associates were to be near and help him to collect his thoughts by cheers, huzzas and the clapping of hands. He was to give them a hint when he wanted the moment for recuperation, by raising his arm and using bold, spread-eagle words, such as the universal Washington, *E Pluribus Unum*, our liberties, the glorious Constitution.

Mr. Gerard, as an advocate, is somewhat like Halleck as a poet—neither can soar without coming down and playing with some pleasant trifle; and perhaps Mr. Gerard's forte is humor, unconstrained humor, which is evidently a source of enjoyment to himself as well as to those who hear him.

At a dinner given by the members of the New York Bar to Judge Samuel Jones, on the occasion of his retirement from the bench and return to practice, Mr. Gerard was called upon for a toast. His remarks embraced the new code of practice which was, at

that time, in disfavor ; and he took up the old fictions of the law. He gave detailed biographies of those legal personalities, James Jackson, John Doe and Richard Roe, including the good qualities possessed by those two famous personages, Doe and Roe, who never refused to go bail for any one, man, woman or child, but who hunted poor James Jackson to the day of his death. The biography of John Stiles, who was the son of William Blackstone, by a left-handed marriage, was next given ; as was the history of Thomas Noakes, Esq., likewise a son of Blackstone by a left-handed marriage and a collateral branch of the Stiles family. But, he said, all these notorious individuals had been strangled, strangled by modern reform. The new code has done away with these notorious personages, James Jackson, Doe, Roe, Stiles and Thomas Noakes, Esq. Modern reform has done all this and would do much more. Then, playfully, taking up the subject of the code, he rejoiced in the approach of the time when we should have cheap law and every man a lawyer. The Kilkenny cats would not be able to hold a candle to such new lawyers, who would eat one another up so fast that there would not even be a latter end to fight about ; and there would, indeed, be a glorious millennium, when we should have such cheap law, every man a lawyer and the profession of the Bar abolished for ever. He gave as a toast, to be drank in silence and standing—

“ The memories of James Jackson, John Doe, Richard Roe, John Stiles and Thomas Noakes, Esqs.”

We have read that a sheriff in the State of Mississippi, after making a legal return to a writ in an action of ejectment, added—

“ I think it right for me to mention that there is no such person as John Doe in the State.”

Samuel A. Talcott, formerly attorney-general, was once arguing a case in the late Court of Errors, in which his adversary was complaining of the judges who had made the decision which was cited against him and which he insisted was obscure. Talcott, in reply, observed it was sometimes difficult to tell whether an obscurity complained of was owing to a spot on the sun or a cloud around the beholder.

Mr. Talcott, when young at the Bar, attracted the attention of Chancellor Kent. His honor drew, in his own happy language, the characteristics of Martin Van Buren ; the powers of Daniel Webster ; and ended by observing that Samuel A. Talcott had the greatest law head for a young man of any one he had ever read of or heard.

Talcott was idle all day when a student at college, but worked hard at night ; and after his admission to the Bar, he still used the night hours. Once, staying with a brother lawyer in New York, he could be observed very late in his room, not sitting up at his professional labors, but lying upon his stomach upon the floor with law books all around him.

There were few generalities about Mr. Samuel A. Talcott. Almost all he did was characteristic of the man. He was very fond of looking into black-letter law books ; and whenever he met with any thing particularly quaint or otherwise peculiar in style, he would make a note of it in a common-place book which he carried in his pocket. These short things and extracts he was fond of showing to friends and having a laugh over them. He would often go to Vice-Chancellor McCoun, with a view to look at some volume of chancery reports to which he had found a reference and ask the loan of it. On one occasion Mr. McCoun lent him three small volumes relating to Law and Lawyers of Westminster Hall. He accompanied their return, with a note in these words :

“MY DEAR SIR : I return your books without my thanks, because I choose to keep the *latter* till I can give them to you in some way more durable than by blotting paper. And till then believe me, if not your humble servant, at least your sincere friend,

“SAM'L A. TALCOTT.”

At another time, in searching for cases in which the Court of Chancery had charged executors or trustees with compound interest where they had neglected to invest moneys in their hands, as they were bound to do by the terms of a trust, he found a reference to 2d McCord's Reports of South Carolina, and borrowed

the volume of Mr. McCoun. This reporter McCord, together with Mr. Nott, had previously published some volumes known as Nott and McCord's Reports. On returning the borrowed book, Talcott sent to the lender the following epistle :

"DEAR SIR: The case in McCord *accords* with my own views of the subject. But I object to the judge's making Lord Eldon say of compound interest, 'it has been the habit of the court to give it,' for Lord Eldon expressly says (11 Vesey, 106) 'though it has *not* been the habit of the court to give it.' I ascribe this mistake to Mr. McCord's having reported the case after he had dissolved partnership with *Nott*. Very respectfully, etc.,

"S. A. TALCOTT."

The mistake occurs in 2 *McCord*, 203, *Wright v. Wright*.

Samuel A. Collier was addressing the Court for the Correction of Errors in a very composed and slow manner, with one foot upon the seat of his chair. Talcott went behind him and said—

"Why are you so vehement and impetuous and succinct—be slower and more diffuse."

Collier humored the thing, but to such an extent and in so idle a direction that the presiding judge had, at last, to say—

"Mr. Collier, the court does not exactly appreciate what you are saying."

"I can quite believe it, your honor; I do not appreciate it myself; but I borrow it from my friend the attorney-general at his suggestion and, therefore, I put it before the court."

Mr. A. N——, of the New York Bar, has much business for sailors in their complaints against masters and owners of vessels. He had brought an action in the Marine Court for a crew to recover wages. The offence was desertion. It was insisted, on the part of owners, that the master had merely allowed the men to go on shore for a short period and had not discharged them from the vessel. Mr. N——, however, insisted on the contrary, and laid great stress on the fact that the captain not only told them to go, but brutally added, "they might go to h—ll for what he cared."

Mr. Ambrose S. Jordan, who was on the other side, told the

jury they ought to give his client, the master, credit for being somewhat of a prophet, for when he told the men they might go to the devil, he was mentally convinced they would land in Mr. A. N——'s office.

This is of a piece with the circumstance of an English sailor lately going to the acting British Consul of New York to complain of his captain :

“He told me, sir, to go the devil, so I came to you.”

Mr. Jordan, although a lawyer of great quiet industry and power, was easily made irritable. In a case where he was opposed by Mr. Daniel Lord and had got his temper chafed, he angrily observed :

When he went into the suit, he certainly thought he should meet a gentleman in his antagonist, but he was sorry to find himself disappointed.

Mr. Lord retorted by observing, When he went into the action, he knew he was not to have a gentleman opposed to him and consequently he was not disappointed.

This must not go to the disparagement of Mr. Jordan's character, because there was a dignified breadth and general gentlemanly bearing which told well upon him.

We have no desire to keep alive the particulars of the libel suit brought by Mr. Erastus Root against Mr. Charles King, but certainly at the time when Mr. Root was at the Bar, there was not much cold water drank, and most of the lawyers of the time would have been likely to declaim an old epigram :

“Ye sneaking water drinkers all,
I utterly condemn 'em ;
For he that would write like Homer,
Must drink like Agamemnon.”

Mr. Root once got an additional fee on a promise that he would not drink any spirits until after the trial of a cause in which he was thus retained. The case was about to be called and up to this time Mr. Root was as innocent as Root-beer itself. But now came an inward heaviness of sinking—so he retired to a grocery, bought a loaf of bread, saturated it with rum and eat it.

He then went into court and won the cause,—without having *drank* any spirits.

Erastus Root, as Lieutenant-Governor, was among the visitors of Governor Yates on New Year's day, on which day they had entered on their offices. General Root was partaking very freely of the liquids provided for the occasion, when the Governor exclaimed :

“ Ah ! General, that is your worst enemy.”

“ Yes, Governor, but you know we are commanded to love our enemies.”

In a recent trial of a celebrated *crim. con.* case in the city of New York the defendant's counsel sought to mitigate the damages by proving that the plaintiff had been in the habit of coming home drunk. The plaintiff attempted to parry the blow by showing that the plaintiff had carried on a large and successful mercantile business and that neither partner nor customer ever discovered him under the influence of liquor. The defendant's counsel objected to this evidence and gave as a reason that there were some men who did their business much better when drunk than sober.

“ Then,” quickly replied his adversary, “ I advise my opponent to go out and take a drink by way of experiment.”

Judge Edmonds, soon after leaving the bench, was arguing a case in court, when his adversary triumphantly and with much tenacity quoted a decision of his own when a judge, which was terribly in point against the position he was now advocating. The judge was evidently annoyed by the incident and was not much relieved by his opponent's quoting :

“ The eagle's fate and his are one,
Which, on the shaft that made him die,
Espied a feather of his own
Wherewith he went to soar so high.”

These are from Waller's verses to a lady singing a song of his composing :

“ Chloris yourself you so excel,
When you vouchsafe to breathe my thought,

That, like a spirit, with this spell
 Of my own teaching I am caught.
 That eagle's fate and mine are one."
 &c., &c., &c.

Byron has the same metaphor :

"So the struck eagle, stretch'd upon the plain,
 No more through rolling clouds to soar again,
 View'd his own feather on the fatal dart,
 And wing'd the shaft that quivered in his heart;
 Keen were his pangs, but keener far to feel
 He nursed the pinion which impell'd the steel;
 While the same plumage that had warm'd his nest
 Drank the last life-drop of his bleeding breast."

His lordship has been charged with stealing from *Æschylus* ; and although in one of his letters (1817) he declares he was passionately fond of portions of him, yet it may be reasonable to suppose that Byron unconsciously or consciously was indebted to Waller for his simile.

By the way, Tom Moore, in his satire "Corruption," which he published in 1808, a year prior to the issue of Byron's "English Bards" (1809), uses the figure thus :

—"Like a young eagle who has lent his plume,
 To fledge the shaft by which he meets his doom;
 See their own feathers pluck'd to wing the dart,
 Which rank corruption destines for the heart."

A similar incident occurred to ex-Judge Edmonds before Judge Roosevelt, who seemed to take pleasure in presenting ex-Judge Edmonds one of his own decisions as in conflict with the position he was then taking, and he would not listen with much attention to an attempted distinction which Edmonds urged with earnestness, until at length the latter, getting out of patience, said :

"He supposed he had committed as many errors on the bench as any one who had ever sat there ; but his regret at such a state of things was greatly aggravated by finding his own tomfooleries cited as an excuse for somebody else's.

In the well-known Forrest divorce case a question of alimony was on argument. Charles O'Connor was advocating an allowance of four thousand dollars a year ; and John Van Buren and John W. Edmonds on the other side were endeavoring to reduce it to two thousand dollars. Van Buren, in opening the argument, had, among other things, instanced the judges of the Supreme Court who were allowed only two thousand five hundred dollars a year. O'Connor in reply condemned the paltry allowance given to judges and said he never knew a judge who had lived on the pittance. Ex-Judge Edmonds interrupted him by observing he had known one (referring to himself).

"Yes," was O'Connor's ready response, "and the first chance they got, the people relieved him of the burden."

This returning to the Bar by those who have been judges seems sad to those who have looked at British jurisprudence. In England it is uncommon, although such things have been. Thus, Pemberton, who, as Lord Chief-Justice of the King's Bench, presided at the trials of Russell and Sydney, was removed from that office and was afterwards counsel for the accused in the trial of the Seven Bishops. (*Notes and Queries*, 3d Series, 463.)

Who that has lived any time in New York City has not heard of Brown, the elaborate, handsome Sexton Brown of fashionable Grace Church—Brown who patronizingly instructs the young slips budding into fashion-flowers to expand themselves at parties and who guides to the choice seats of opera and gives walking criticisms on basso and tenore ?

In arguing what is known as the Parish Will Case, John Worth Edmonds was describing the devotion of the widow who had withdrawn from society and given up her time for seven years to the care of her paralytic husband, when she had every temptation to enjoyment—her palatial residence in Union Square, her income of fifty thousand dollars a year, her accomplishments, her wide circle of fashionable friends, her box at the opera, her pew in Grace Church. Edmonds, perceiving a smile on the countenances of the judges, paused a moment, and seeing what he had done, apologized, adding, "the juxtaposition of these two places of

amusement was not original with him, for he believed the all-sufficient Brown was alternately sexton and door-keeper to both."

It is said that Sexton Brown at one time so far went out of his clerical duties as to mingle with mercantile speculators in provender. A very extensive corn-dealer had an elaborate pew in Grace Church. Having, one Sunday taken his place there, our Brown, moving up the aisle, very deliberately and with all his fullness, leaned over the edge of our corn-factor's pew and was heard to ask :

"Mr. —, what is the last quotation for oats?"

At another time, while the congregation were getting into their folds, a wealthy parishioner, just settling himself upon easy, fleecy cushion, took out his snuff-box. While opening it, Brown came up the aisle, rested himself with all his "deportment" upon the pew, holding one arm somewhat out invitingly.

The gentleman put forth the snuff-box, and Brown, taking therefrom very dapperly a pinch, sailed up the aisle, and ever and anon—like Hotspur's man with the pouncet-box—gave it his nose and took't away again.

Pope, in his beautiful portrait of Belinda, thus closes it :

"If to her share some female errors fall,
Look on her face and you'll forget them all."

These lines would have applied to Benjamin Franklin Butler. Purity of intention and fine intellect, mind well toned down, never breathed more charmingly over a countenance than over the face of this gentleman.

Judge Edmonds had a divorce case before him in New York, in which the details were rather revolting. It was adjourned over from a certain day to the next, while Mr. Benjamin F. Butler, one of the counsel engaged in it, was in the midst of his argument. The newspapers of the following morning were full of the case; and when Mr. Butler came into court and saw the room was crowded, he continued his argument by a severe castigation of the prurient curiosity which had brought so many people there to hear so foul a case.

When he had closed, the judge went on with other business.

But after the adjournment of the court, his honor stepped into Mr. Butler's office, and referred to his tirade. He excused himself by saying how offensive it was to him to see the rabble running after such causes. The judge asked him if he had observed who the audience was whom he had scolded so roundly. He answered, No, but supposed they were the class of people whom such cases attracted. His honor told him he was woefully mistaken, for that his audience and he (the judge) had greatly enjoyed his mistake; for such audience consisted of a bishop, a large number of clergymen and more than a hundred of the leading members of the Methodist Church, who had come there expressly to hear Judge Edmonds' decision on the question of the bishop's power to displace the clergy, which he had announced he would deliver that day.

The Rev. Dr. Thomas, in a late address before the Presbyterian General Assembly at St. Louis, in connection with some contumacious attitude of the Louisville Presbytery, and in reference to the increasing contempt of youth for authority, gave the following by way of illustration :

"The great want of our age, sir, is a spirit of obedience to law; of reverence for constituted and legitimate authority; of respect for those who exercise authority, whether in the family, the State or the Church. Let me illustrate the habits and temper of Young America, sir, by an anecdote respecting the late Hon. B. F. Butler, whose sobriquet of 'Sandy Hill' was familiar to politicians of twenty years since. He was invited to a Mission Sunday-school in the city of New York. The superintendent introduced him to the boys as the Attorney-General of the United States, one of the most distinguished citizens of their native State, and an active friend of friendless youth, adding, while he pointed to the clock, that Mr. B. would limit his speech to fifteen minutes.

"Well, sir, they listened with fixed attention, but they kept an eye on the clock. The orator, warming with his theme, forgot the limitation of his time, and had passed the bound only a few seconds, when a tattered urchin, probably a newsboy, and so familiar with political slang terms, suddenly sprang up, and, pointing to the

clock, exclaimed, 'Sandy Hill, your time is out !' That, sir, is an illustration of our respect for those in authority."

The remainder of Dr. Thomas's address is worth preserving :

"Our political papers practice and cherish this pernicious and degrading habit. Our people speak familiarly and contemptuously of the President of the United States of America, the highest dignitary on earth, as 'Old Buck,' 'Abe Lincoln,' or 'Brandy Johnson.' Is it in the use of such epithets that we 'fear God and honor the king?' Is not this the conduct of those that 'despise governments?' of whom St. Peter says 'presumptuous are they, self-willed ; they are not afraid to speak evil of dignitaries.'

"Sir, the tendency of our times—perhaps it may be a natural abuse of the nature of our free institutions—is to despise government, to cultivate a spirit of insubordination. Why, sir, if you will pardon me for relating it, I had once a curious exemplification of this Young Americanism in my own household. It has already appeared in the public prints without my consent, and, therefore, it may not be indecorous to allude to it. I had a little son about four years old, who, of course, I thought a very bright and promising fellow. During my temporary absence from home for a few days on one occasion, his mother relieved the weary interval with reading to him the story of the Revolutionary War. The little fellow treasured up the scattered facts and anecdotes and narratives of the battle-field, until his youthful patriotism was kindled to a flame and his blood began to boil. I returned home late in the night, when he was wrapped in slumber. He rose later than usual. While we sat at breakfast he came down and seated himself by my side in silence. He withheld the familiar welcome—the customary kiss. Evidently his mind was engrossed with something. He sat brooding his topic for a few moments and then turning to me, he said,

" ' Father, are you British ?'

" ' My son,' said I, ' I had the good or bad fortune to be born in England ; but like the Irishman, I was brought over here so early that I became a native.'

" ' Well, sir,' said he, his childish face all aglow, and shaking his

little fist at me, '*we whipped you once, and can do it again.*'"
(Great applause.)

Benjamin F. Butler was a Sabbath-school teacher while holding the office of Attorney-General of the United States and had, in 1846, his Bible class for young men.

During our civil strife, the Confederates at Charleston fitted out a privateer, the schooner Savannah ; and she, having captured the brig Joseph, laden with sugar, was, in turn, taken by the United States brig-of-war Perry. Her officers and crew were conveyed to New York, where a true bill for piracy was found against them. A little time before this, the men of a Southern privateer, Jefferson Davis, had been convicted in Philadelphia of piracy, for having seized and sent away as a prize the Enchantress ; so that, here was a precedent for finding the men of the Savannah guilty. It turned out, however, that the jury could not agree ; and ultimately, the accused were allowed to go without day ; and those who had been found guilty in Philadelphia were, at last, released. Mr. James T. Brady was one of the counsel to defend the Savannah men, although retained more especially for her commander. Perhaps there is no case in which Mr. Brady appears better than in this. The ending of his address to the jury is well worth giving and reading :

"The struggles in the history of the world to have, in criminal trials, an honest judiciary, a fearless jury and a faithful advocate, disclose a great deal of wrong and suffering inflicted on advocates silenced by force, trembling at the bar where they ought to be utterly immovable in the discharge of their duty, on juries fined and imprisoned and kept lying in dungeons for years, because they dared, in State prosecutions, to find verdicts against the direction of the court. The provisions of our own Constitution, which secure to men trial by jury and all the rights incident to that sacred and invaluable privilege, are the history of wrong, against which those provisions are intended to guard in the future. The present trial, gentlemen, furnishes a brilliant illustration of the beneficial results of all this care. Nothing could be fairer than the one which these prisoners have had ; nothing more admirable than

the attention which you have given to every proceeding in the case. I know all the gentlemen on the jury well enough to be perfectly certain that, whatever verdict they render, it will be given without fear or favor or the law of the land, as they shall be informed it does exist on a calm and patient review of the testimony, with a due sympathy for the accused and yet with a proper respect for the Government: so that the law shall be satisfied and individual right protected. But, gentlemen, I do believe most sincerely that, unless we have deceived ourselves in regard to this law of the land, I have a right to invoke your protection for these men. The bodily presence, if it could be secured, of those who have been here in spirit by their language attending on this debate and hovering about these men to furnish them protection, Lee and Hamilton and Adams and Washington and Jefferson, all whose spirits enter into the principles for which we contend, would plead in their behalf. I do wish that it were within the power of men, invoking the Great Ruler of the Universe, to bid these doors open and to let the Revolutionary sages to whom I have referred and a Sumter, a Moultrie, a Marion, a Greene, a Putnam and the other distinguished men who fought for our privileges and rights in the days of old, march in here and look on this trial. There is not a man of them who would not say to you that you should remember in regard to each of these prisoners, as if you were his father, the history of Abraham when he went to sacrifice his son Isaac on the mount—the spirit of American liberty, the principles of American jurisprudence and the dictates of humanity constituting themselves another Angel of the Lord and saying to you when the immolation was threatened: ‘Lay not your hand upon him.’” (Trial of the officers and crew of the schooner Savannah, p. 282.)

Mr. James T. Brady was summing up in the New York Court of Common Pleas, when a dog barked, as only dogs can; and this was increased by officers trying to eject him. At last it was accomplished, silence and order were restored; and Mr. Brady went on with—

“Having the floor, gentlemen of the jury, and a right to it, I

go on by first quoting Shakespeare : 'I am Sir Oracle, and when I ope my mouth let no dog bark.'"

Mr. Chauncey Shaeffer was holding forth, before Justice Roosevelt, against an application to remove the establishment of the John Street Church in New York further up town—beyond Canal Street—and at last, he observed, he did not see how an order could be granted, unless it was conceded that Jesus Christ did not die for people below Canal Street.

At a General Sessions in the city of New York, in 1816, George Wellington and Abel S. Franklin were tried for forgery. John A. Graham, LL. D., was counsel for the prisoners ; and, in his usual wing-spread manner, thus addressed the jury :

"Here, gentlemen of the jury, is a foreigner, an Englishman" (pointing to Wellington); "but, gentlemen, however degraded may be his present situation, the character and stamp of greatness break through the gloom by which he is surrounded, even as the sun breaks through thick clouds and irradiates the face of nature. Gentlemen, mark the name—*venerabile nomen gentibus*. This unfortunate foreigner, if I am correctly informed, is descended from the same illustrious ancestors and is a near relative of the immortal Duke, of whom you have all heard, who, in the field of Waterloo, gave the final blow to Napoleon and repose to Europe. The other has descended from a source not less pure. He claims descent, in a right line, from a name dear to his country, a philosopher who caught the lightning from the flaming heavens and imprisoned the winged thunderbolt" (here, a rhetorical flourish with the right hand). "Gentlemen of the jury, I beseech your compassion for these illustrious personages."

Wellington and Franklin, however, were found guilty and sentenced to the State prison each for seven years.

During the early career of Nicholas Hill, he and Rosencrans had a petty case before a justice and jury at Saratoga. The client of the latter was not the most virtuous and his *liaisons* among the other sex had given him several sleeping places. Hill stood very pointedly upon the excellency of his own client's character ; and

also repeatedly gave the jury to understand that he was also a man of family.

Rosencraus, while summing up, said—

“The opposite counsel, gentlemen of the jury, has been exceedingly anxious to impress you with the fact that his client is a man of family ; now, as a pretty good set-off to this, I beg to assure you, gentlemen, my client is a man of several families.”

James Gordon was tried at the Special Sessions of New York with an intent to ravish. He had entered the dwelling-house of a citizen at night, through a window, and attempted to deceive the wife by representing himself as her husband and proceeded to other acts which clearly indicated his intention, although these did not extend to actual violence. Mr. William M. Price, for the prisoner, put in the following unique grounds by way of defence :

“1. He is a man of good character, industrious and religious.

“2. Being of good character, industrious and religious, he attended an Irish wake and, according to custom, became drunk.

“3. Being of good character, industrious, religious and drunk, he entered the dwelling-house of one of our citizens, by mistake for a house of ill-fame.”

Gordon was found guilty and sentenced to the penitentiary for two years. (New York City Hall Recorder, 91.)

The editor of the Knickerbocker Magazine wrote thus of the death of Mr. William M. Price : “The sadly self-contemplated death of the late William M. Price has created a profound sensation in this community. A lawyer of eminence, widely known for so many years, not only for his rare legal endowments and especially for his distinguished eloquence, but also for the surpassing urbanity of his manners—an urbanity which sprung from the natural kindness of a warm heart—he has passed from among us, leaving behind him the regretful remembrances of all who best knew him and his eventful history. Those who have heard, in past years, the eloquent exordium fall in silvery tones from his lips at the Bar ; who have seen him in better days the chief adornment of the social board ; who have known his genius and tested his heart ; while they lament his loss, will look with a lenient eye upon his

surrender at last to a resistless despair. With his mental powers frozen to indifference, his heart ossified with melancholy forebodings, his soul shrouded in clouds of gloom, no consolation could break the death-like calm ; no love warm the pent-up heart ; no sunbeam dispel the cloud. Think of this, all ye who condemn and drop a tear to the memory of one whose own heart was seldom untouched by the wants or the afflictions of his fellow-men."

Mr. George Wood, of the New York Bar, was absent-minded. On one occasion he was acting as counsel in an important case in the Court of Appeals. The counsel on the other side started a point which Mr. Wood considered damaging and, rising, claimed it had not been made in the court below. His opponent insisted he was mistaken ; but Mr. Wood declared he remembered well that no such point had been put on the former argument. "Why, Mr. Wood, you did not argue—you were not in the case in the court below !" It was difficult to convince him of this—but such was the fact.

Probably the case in which Mr. Wood most distinguished himself was *Martin v. Waddell*, in the Supreme Court of the United States. (16 *Peters' U. S. R.*, 367.) His argument is an exhaustive and unanswerable exposition of the law on the subject of the right of the sovereign to lands under water. Some few years afterwards, Mr. Wood was retained by a young attorney in a case somewhat analogous. In the course of a consultation, Mr. Wood observed : "You will find all the law in a New Jersey case." The attorney, supposing he referred to a leading one reported in the first volume of Halsted, asked him if that was the case he meant.

"No, no," replied Mr. Wood.

"Perhaps," said the attorney, "you are thinking of the case of *Martin v. Waddell*."

"Yes, I mean that case ; were you, sir, in it ?"

Here, Wood had forgotten the title of the most important case he ever argued and evidently had not remembered who were the counsel engaged.

Mr. George Wood came to New York with a reputation as an able equity lawyer—and which he continued to sustain—from the

Bar of New Jersey. He had, however, a heavy and quiescent manner and reminded one of the cow looking over the stream.* This caused him to be often overlooked and unappreciated by an ordinary observer. Although he was very elaborate and his argument flowed in one stream, having neither wave nor ripple, yet, as he always had his lesson well-up, he was no mean antagonist on a great question. Webster thought this, as witness the following. The latter was retained to argue a certain appeal at Washington in a cause which had originated in New York :

“ Who is to argue against me ?” asked Webster.

“ Well,” said a person, “ I believe it’s a drowsy man named Wood ; but the last time I saw him I should say he was fairly asleep.”

“ What, George, Wood ?”

“ Yes, that’s the sleepy man’s name.”

“ Then,” said Webster, “ *don’t wake him !*”

Mr. Wood was not what is called an apt or ready lawyer ; and many of his brothers were under the idea that he required much assistance from his junior associates for tidal waves before he was at full flood. Mr. J. T. B—— chose to say he was a mere big coffee-pot ; if you stuffed him full of good coffee, he’d pour clear.

At the time Mr. William M. Evarts was assistant United States District-Attorney in New York, he had associated Mr. Ogden Hoffman with him in the prosecution of three prisoners who had been indicted in the United States Circuit Court for murder on the high seas in the Pacific Ocean. The accused being without counsel, the court assigned Messrs. Erastus C. Benedict and Luther R. Marsh to conduct the defence. The two last-named thought it would be policy to palliate the blows of their adversaries by representing, in as glowing terms as they could, the great power which was brought against the prisoners. And Mr. Marsh complained to the jury that they were obliged to ward off, not only the glittering cimeter of the assistant district-attorney, as cold as if it had been kept in an ice-house since the morning of time, but the pon-

* “ —was musing, perhaps, or, perhaps, she might dream.”

derous battle-axe of his associate. In depicting the eloquence of Mr. Hoffman for the prosecution, Mr. Marsh applied to him a quotation from Theodore De Weld, that he was "one of those who could rise upon the heaving exigencies of the moment; and at whose bidding, instant creations and mighty embodyings of thought and argument, sublime conceptions, glowing analogies and living imagery burst, as by miracle, from the deep of mind, in overshadowing forms of majesty and power." With a seeming single and beautiful sweep Mr. Hoffman brushed all this away: "They have praised me beyond my deserts. Their praise has been suggested by interested motives, so that they might lessen the just weight of the argument I shall present to you. They have decked me with roses and crowned me with laurel that they might strike me on the head with their consecrated axes."

Mr. Jenkins, of the Oneida Bar was arguing a cause before the Court of Appeals, one of the judges being absent. In the midst of the argument this judge arrived, took his seat, and very soon—it was perhaps too much a habit—commenced interrupting the counsel by questions and suggestions, Mr. Jenkins with great courtesy replying to the judge until he at last became very much annoyed. As he came to a part of the case relating to an assignment of cattle, hogs, etc., "including the Titman pig"—

"Mr. Jenkins," said this judge, "what is the 'Titman pig?'"

The counsel replied:

"May it please your honor and the court, the Titman pig is the last of the litter and the noisiest of the lot."

The reply, with the consequent laughter from bench and Bar, enabled the counsel to pursue the rest of his argument without interruption.

Chancellor Robert R. Livingston claimed lands to a large amount in value lying in the north part of the County of Dutchess. In an ejectment suit brought by him against Hoffman, the tenant, the chancellor appeared at the bar as the advocate of his own cause. His concluding speech contained a boldness of illustration and burst of eloquence never before witnessed at a New York Bar. He rebuked the opposite counsel for their attack on the character

of one of his ancestors, respecting the early grants of the manor of Livingston, and for "raking the ashes of the dead in the presence of a great-grandson." He invoked his ancestor from the tomb in which he had slept for a century and led him into court to speak for himself, by a daring prosopopeia, which surprised, startled and confounded the jury. He carried his cause, as it were, by a *coup-de-main* and obtained a verdict rather by the force of his character and the charm of his eloquence, than by weight of evidence. (Chancellor Kent's address, delivered before the Law Association of the City of New York, October 21, 1836.)

Some years ago the Common Pleas of Onondaga County made a rule that writs of *certiorari* from Justices' Courts should not be argued except on written points furnished to the court. Mr. James R. Lawrence, General Lawrence as he was called, being pressed into an argument by his adversary, Mr. Noxon, before his points were prepared, sat down during Noxon's argument and made the following as his sole point, knocking off copies at the same time for each member of the court :

"The judgment of the justice was correct,
And will be affirmed, as I suspect."

In another case the same Mr. Lawrence having read a variety of authorities to the court, Mr. Noxon, when he came to reply, took the first volume that lay at hand, opened it indiscriminately and commenced reading. He had not proceeded far before Lawrence inquired what possibly that had to do with the case ?

"Just as much," responded Noxon, "as the cases you have read, which is nothing at all ; but I thought I would read an equal number of law paragraphs on my side."

The case of *Peter Duffie v. George Matthewson* and others was brought in the Marine Court of New York, before Justice Swanson. We give it in the amusing manner in which the same appeared in the papers of the day. This was an action of assault and battery alleged to have been committed on board the British ship *Thomas of Lancaster* while on the high seas, of which ship

Matthewson was the captain, the other defendants seamen and the plaintiff one of the passengers.

It appeared that the ship came from the chalky cliffs of Albion with a number of passengers and arrived on the banks of Newfoundland. The sons of the deity who rules the wide domain through which they had passed in safety, with joy beaming in every eye, met and conferred. By a recurrence to ancient legends coeval with common law, and among them of greater validity, it was found that as often as a landsman came in view of the banks before them he must produce a bottle of cognac or rum as an acceptable sacrifice to Neptune.

The nature of the sacrifice was explained to the landsmen, and the greater part complied with a requisition sanctioned by immemorial usage ; the defendant, with others, refused. Whereupon the seamen invoked the god with sad complaints :

“ Oh, Omnipotent Father, king of the ocean, behold the rebellious sons of Terra, who have dared to intrude into thy dominions, refusing to bend before thy divine altar and to render to thee an accustomed libation. Their beards, oh, father ! are long, uncouth and indecent, retained by them in defiance of thy laws and in derision of thy divinity.”

The father of ocean heard and lifted his awful head sublime above the waves, attended by the Tritons, the Nereides and all the daughters of the azure main.

He saw his children and thus responded to their complaints through a brazen trumpet, whose reverberations shook the distant promontory of Chapeau Rouge and re-echoed through the spacious bay of Placentia :

“ Carry these impious mortals from my presence,—behold their beards which they dare to retain in despite of my authority. They shall be shaved.”

“ *Sic fata sinant,*”

he said, and, taking his razor and shaving-box from his car, while Amphitrite held his horses, he seized the prow and ascended by the head rails into the lofty ship. His presence inspired his

children with joy. But while imparting his commands, through his brazen trumpet, to the crew, the landsmen below trembled :

“Bring hither that tub, and fill it with sea water.”

’Twas done.

“Bring forth the long-bearded tribe, one by one.”

The command was obeyed. But Duffie, when it came to his turn, was inclined to be refractory, and resisted. But who can resist when gods command ?

The razor used by his godship was manufactured in the caverns of *Ætna* by one of the Cyclops, from an iron hoop ; and, though somewhat *rough on the edge*, did good business.

Held above the tub, Duffie underwent the operation with streaming eye, while the most unsavory smell from the lather entered his nostrils. As soon as the office of the razor was accomplished, and the awful oath which binds even gods below was administered, the tub below received him ; the ceremony was done, and the god descended into the bosom of the “vasty deep.”

It appeared that a lady passenger named Ann Jones was subjected to the same ceremony, the humor of which was enjoyed by Duffie in common with others. Markwell personated Neptune and the captain acted in the capacity of assistant to the deity and was aiding, abetting and assisting in the ceremony.

Mr. Justice Swanson charged the jury that it was the duty of the master of a ship to treat his passengers with attention and politeness. The captain stood in the same relation to the passengers as the master of a hotel or an inn did to his guests. Having the superintendence of his vessel, the law had invested the captain with the authority necessary for preserving peace and good order.

On this occasion the captain not only failed in treating the plaintiff with a becoming decorum, but countenanced and actually had some agency in the injury charged in the declaration. The conduct of the defendants towards the plaintiff was highly reprehensible. After taking into consideration the wounded feelings of the plaintiff on the one hand and the circumstances of the defendants on the other, it would be the duty of the jury to render such a verdict as they considered just and equitable.

The jury rendered a verdict in favor of the plaintiff for forty-six dollars.

Mr. Elisha Williams, having listened to an antagonist who was rather a dull speaker and had infused into his summing up a vast deal of fustian, rose and said :

“Gentlemen of the jury, if I did not feel strong in the justice of my cause, I should fear the effect upon you of the eloquent harangue to which you have just listened. That, gentlemen, was a splendid, a magnificent performance. I admire that speech, gentlemen of the jury. I always admired it. I admired that speech when I was a boy.”

The same sort of thing, however, has been told of a sharp, uneducated lawyer opposed to Williams, answering him after an eloquent address :

“Gentlemen of the Jury and your Honors—I should despair of the triumph of my client in this case, after the eloquent appeal of the learned counsel, but for the fact that common law is common sense. No man could like better the piece which the learned gentleman has spoken than what I like that piece. He spoke it good. I’ve heered him give it four times afore ; once at Schodack in a rape case ; once at Kiak on a suspicion o’ stealin’ ; once to Poughkeepsie on a murder case ; and the next time at Kakiah about a man who was caught a— Well, he always spoke it good ; but this time, he’s really beat himself. But what does it all amount to, gentlemen of the jury ? That’s the question ; and you can answer it as well as I kin and better tew.”

Mr. Levi Beardsley mentions a case in which he was associated with Mr. Elisha Williams. A child was at school at the Quaker Seminary in Providence, Rhode Island ; and Williams and he were retained by the father, against the movements of her grandparents, to obtain possession of it. But she was spirited away at night, says Mr. Beardsley, “as soon as the grand-parents learned that we were after her. The next day they appeared in court, to make return and answer the writ to bring up the body.

“We had served the *habeas corpus* at night on the principals of the seminary, who also appeared and answered. All of them

denied having the child in custody. They made return to the writ and put in their answers under the advice of counsel and the best counsel they could get. Dutee J. Pearce and the late William Hunter acted as counsel. Mr. Williams moved the court for leave to file interrogatories and that the defendants should answer on oath. This was resisted ; and the questions were argued with much ability and by Williams with thrilling eloquence and most powerful effect. He had never met the Rhode Island Bar before and this was his first appearance before Judge Story, who, as well as the members of the Bar, were delighted with him. Williams seemed to enter into the argument and the whole proceedings with more heart and feeling from the fact that the parent of the child, who was a respectable clergyman, was the son of the old pastor under whose preaching Williams had been brought up. The case was argued with much ability on the other side, for Pearce was quite an able man and Hunter was at the head of the Bar in that State. But Williams broke down all opposition and carried the court and audience with him. When he discussed the natural right of the father to the custody of the child that he might enjoy her society and direct her footsteps along the path of life, while her tender mind should be guided in the ways of truth and virtue, and then depicted the cruelty of the attempt to exclude him and to prejudice her mind against him—while those having the custody of the child were setting the laws at defiance and evading or disregarding the mandate of the court—his appeal was eloquent and effective beyond description. Many of the crowded audience were in tears. The court allowed our motion and ordered the parties to appear the next day to answer interrogatories. In the evening we drew up and copied interrogatories, twenty-five in number, as searching and sifting as we could make them. When we were through it was eleven o'clock. Williams said, 'We will stop now ; we have got enough. We will go down and let Horton make us a good glass of whiskey-punch ; and to-morrow we will have the girl or have the Quaker in jail.' On serving copies of interrogatories, the opposite party in a measure gave it up and proposed a compromise, which was assented to and an order was made by the

court to carry it into effect. In due time the child was surrendered to her father."

The Clark will-case occurred about 1820 or 1821 and was tried before a Circuit Court. Mr. Clark, eighty years of age, had made a will disposing of a large amount of real and personal property in a manner which seemed to indicate great imbecility of mind and which appeared unreasonable and unjust. A majority of the Clarks desired to set it aside; and Mr. Williams was retained. On the trial, after availing himself of every argument that could be drawn from the facts in the case, he closed by saying that—

"Our bounds to three score and ten are set. Shall a man, then, eighty years of age, make a will? No, he has outlived God Almighty's Statute of Limitations."

Kent, the commentator, in a letter, speaks of Williams as having been eloquent, ingenious and impressive, showing especial sagacity and judgment in his examination of witnesses, while his addresses to juries were always forcible, pithy, argumentative and singularly attractive—heightened by a volubility of language and melody of voice, a commanding eye and dignified and attractive person.

"His goodness of heart," observed the amiable and great commentator, in a private letter, "his benevolent feelings, his tenderness, his generosity and liberality were displayed in all his intercourse with me and, I believe, with the world. It was impossible to be much in company with him and not to love and admire him." (Williams's Genealogy and History of the Williams Family.)

Here is an observation of Williams's :

"Party is the gourd of a day. It flourishes in the night of deception, but withers when the full rays of investigation are brought to bear upon it."

There is no doubt that Elisha Williams, as a *nisi prius* advocate, was rarely equaled, especially in the cross-examination of witnesses. He had a man upon the rack, on a hot summer's day, in a crowded court-room. The witness became so thirsty from fatigue and fright, as to call frequently for a tumbler of water from a pail which stood near him. At length, Williams could

gency of the case, and acquitted himself in a manner little anticipated by his adroit and eloquent antagonist. In the summing up he was especially strong, energetic and impassioned.

There was an amusing incident connected with his first legislative term, now probably remembered by but few. One of his colleagues was the late Thomas P. Grosvenor, a brother-in-law of Mr. Williams, and one of the most able and eloquent men whose voices have ever echoed either in our legislative or congressional halls. Mr. Vanderpoel had not yet delivered his maiden speech. A very important subject had been given in charge of a committee, of which he was chairman. The committee's report upon the subject had been presented, and made the special order for the following day. Mr. Vanderpoel had prepared himself thoroughly for opening the debate ; and Grosvenor, knowing his capacity, feeling that he would acquit himself well and sure that the debate would not be deferred, took the liberty over night of anticipating the morning's proceedings, and wrote a very splendid and glowing account of the young legislator's speech, dispatching it by the morning's mail to the New York press. Unexpectedly, however, on the meeting of the house next morning, the go-by was given to the special order and the speech was not delivered. When the mail arrived with the undelivered speech, it was of course the cause of a good deal of amusement. But Mr. Vanderpoel was said to have the good sense to participate heartily in the joke and help to laugh the matter off.

There was in Mr. John Anthon great breadth of good sense and a thorough knowledge of common law, which caused an unhesitating opinion: the word *doubt* seemed not to be in his vocabulary. Still, his mind could well go beyond black-letter law. The classics were as familiar playthings. He, perhaps, was not the man to "pen a stanza when he should engross," but in the midst of a large professional business—perhaps at one time Mr. Anthon had the largest common-law practice in New York—he was a ready and continued reader of new novels, romances, reviews and poems. The twinkle in his deep-set and remarkably almond-shaped

eye—an eye which attaches to the Anthon family—showed a cheerfulness of disposition and a love for wit and fun.

In a case for libel, wherein Mr. Sylvanus Miller, a member of the Bar, was plaintiff, and Mr. Mordecai M. Noah, an editor, defendant, Mr. Anthon was one of the counsel for the latter. The circumstances of the trial showed that both parties were politicians ; and countercharges, the one against the other, growing out of politics, had been made. Mr. Anthon, in the course of his address to the jury, made the following nicely-toned and sensible remarks :

“I am here as a lawyer. I have long forborne to take any part in the conflicts of the day. I have no party sympathies to indulge—no party vengeance to gratify. If, indeed, the private recesses of domestic peace have been invaded by the libeler, there is no danger that the measure of damages can be too great. But if the question is between two public combatants, which has succeeded in doing the other the most harm, I can hardly imagine the lowest denomination of damages too small for the injury. And to which of these parties does Mr. Miller belong ? Has he been pursuing the even tenor of his way or has he enlisted in the broil as a public combatant ? He has brought the most respectable men in the city to prove his private character. But what is the proof of his political character ? That he is one of the most violent partisans in the city, if not in the State ; and that for twenty-five years he has been one of the genii riding on the tempest and directing the storm. And shall he who has made the first assault complain of a slight blow from his antagonist ? Instead of resting contented with the peaceable enjoyment of character in private life, we find him beginning his political labors in the Citizen, travelling through the Columbian and presenting them ultimately in the Evening Post. These controversies formed the appropriate business of Mr. Noah, but Mr. Miller was a volunteer. Editors are sentinels on the watch-tower of freedom. They may sometimes excite unnecessary alarm ; they may occasionally provoke a causeless hostility ; but they have an apology. The volunteer has none when political combatants engage ; the accounts are brought to-

gether, in mercantile phrase ; the balance is struck ; and the advantage of either side is carried to new account."

In this case it was proved Mr. Miller had used the following strong expression against another politician, that "he would stave in the ribs of his reputation." Mr. Van Wyck, who was one of the counsel against Noah and had to make out that the latter was coquetting towards being bought off in a certain direction, remarked : "He was feeling his way, as if treading among eggs."

The jury did not agree.

About twenty-six years ago, *lobelia* was used as a medicine by ignorant men to a most dangerously killing extent. It was started in this way by a man named Samuel Thomson. He called and so it became to be known as the Thomsonian Remedy. He had a book connected with its application, for which he received twenty dollars, and those who bought it thus got what was tantamount to a diploma and the assumption of Doctor. Legal proceedings in different places were taken against Thomson ; and the regular faculty, who were styled by the Thomsonians "the mineral doctors," were in array against the fell use of this plant. A remarkable trial took place in the New York Court of Sessions (1838) against one of the "Doctors" named Frost, on a charge of manslaughter for killing a Mr. *Tiberius G. French*, brother to Mr. *Ulysses D. French*, a member of the New York Bar. Mr. Thomas Phoenix was then District-Attorney and Mr. George Griffin was associated with him. Mr. David Paul Brown, so long known as a leading criminal lawyer of the Bar of Philadelphia, was one of the advocates for the accused, and, in summing up, playfully observed that he occupied a very perilous position, being opposed both by a Phoenix and a Griffin.

Our main object in referring to this trial is to show the exceedingly peculiar and outside questions put by the Recorder who presided.

Recorder.—"How do you spell lobelia?"

Witness.—"L-o-b-e-l-i-a."

Recorder.—"Is it a vegetable?"

Witness.—“It is.”

Let it be remembered that a woman, the sister of the accused, is under examination.

Recorder.—“What did you say was done with the patient after he vomits?”

Witness.—“An enema is administered.”

Recorder.—“An enema! What is that? Is it administered by the mouth.”

Mr. Brown.—“An enema, sir, as its name implies, is an injection.”

Recorder.—“Madam, how often do patients vomit?”

Witness.—“Generally twice, sometimes more.”

Recorder.—“God bless me! What, of their own accord?”

Witness.—“Yes.”

Recorder (recovering from his astonishment).—“How soon after the dose does the patient vomit.”

Witness.—“Immediately.”

Recorder.—“Well, now we’ve done with the vomiting, let us adjourn until to-morrow.”

Again :

Recorder.—“Do you say you have taken five teaspoonfuls in forty-five minutes?”

Witness.—“Yes.”

Recorder.—“God bless me! most astonishing that you are alive and well!”

Phoenix.—“But if a man with a broken leg had a fever, I suppose you would give him lobelia?”

Witness.—“I should.”

Recorder.—“But would not that endanger his leg? When I had a broken leg, my physician, who was one of the most learned and skillful men in the world, wouldn’t let me move.”

Recorder.—“Do you consider it proper, Doctor, to give a lady emetics during pregnancy?”

Witness.—“Not unless it would be more dangerous to omit than to use them.”

Listen to the same Recorder, passing sentence on another Thompson, for burglary. His honor, rising and smiling on the prisoner : "Thompson, it appears from the evidence, Thompson, and also, Thompson, from the verdict of the jury, that you, Thompson, have been a bad man ; you have been faulty, Thompson, on evidence in a matter which has become too common in this community. The court must make an example of you for your own benefit, Thompson, and also for the benefit of the public out of jail. Thompson, the court has had your case under serious consideration ; and have come to the conclusion that you must suffer some. The court could inflict on you the highest penalty known to the law, fifteen years in the State prison. But we have come to the decision that the great ends of public justice, which are as important in your case as in 'ours, will be maintained by the sentence which it now becomes the duty of the court to pronounce. Thompson, it is the sentence of this court that you be taken hence to be confined in the State prison, at hard labor, for the term of fourteen years and ten months. Be a good, willing man, Thompson, while in prison ; and when you come out, Thompson, take your mother's name, by which you will not be known, and become a useful member and an ornament to society."

A respectable tailor was brought up for judgment before the same Recorder on a charge of assault and battery. It appeared that the accused had been most grossly insulted in his own place of business by a fellow deriding his trade and who had even struck him ; but the tailor, at the time, had not resented it. The man came with insulting expressions another day ; and not being able further to control himself, the Knight of the Shears kicked his annoyer out. The consequence was, this charge for assault and battery. The Recorder, with the greatest gravity and solemnity, and yet with studied politeness, addressed the accused—calling him by his name, "Mr. Brown," in almost every other sentence, giving him to understand how, "Mr. Brown," assaults and batteries were much too common in this community, and people who committed them must suffer some, for the majesty of the law, "Mr. Brown," must be sustained. And his honor went on for a length of time in

such a measured and awful manner, as would have answered well in the case of a death penalty—ending, however, with “if, Mr. Brown, on the very day when Mr. Smith not only called you a stitch-louse, but also assaulted you, you had kicked him out, there would have been sufficient justification; but, Mr. Brown, we fine you six cents for putting the kicking off to an after day.” His honor then laid back in his chair and laughed jollily.

Judge Selah B. Strong, of the Second Circuit, was presiding at Brooklyn, on the trial of a man for the murder of his infant child, by cutting its throat while in the cradle.

The accused was connected with some newspaper establishment. He had not retained counsel; but Mr. William C. Prime and other members of the Bar, seeing the prisoner’s helpless position, aided him—among them, prominently, was a gentleman who had practiced at St. Louis. The defence was insanity; and a respectable clergyman from the interior of the State, by way of confirming the plea, gave evidence that the prisoner, although a stranger, had introduced himself at his house and expressed a wish to give a lecture, stating his ability and readiness to do so on any proposed subject; and, pushing on his talk, without leaving the clergyman to arrange his own thoughts of action, said, “Now, for instance, there is a sofa, I can lecture on that, thus”—and went on all about a sofa.

Judge Strong, in summing up, and which he commenced by weighing matters much against the prisoner, observed:

“It is pressed, gentlemen of the jury, that the prisoner’s insanity is apparent in his having lectured on a sofa. Now, gentlemen, I confess I cannot see any lunacy in this; for one of the greatest of England’s bards wrote a beautiful poem on a sofa.”

Here the St. Louis lawyer started up and exclaimed in his loudest tones:

“Yes, and being insane, tried to hang himself.”

This sad incident in the life of poor Cowper electrified the jury; gave the judge a shock; and the result was, not guilty, on the ground of insanity.

Jedediah Peck was a County Judge in Otsego County, at the

to them other fellows, but hadn't a word to say to you. He slung you up just as he would a darned dorg."

A scamp was brought before an Onondaga Justice of the Peace charged with gambling in the shape of what was known as the strap game. The justice, expressing a wish to decide understandingly, requested the accused to give him an illustration. The man produced a leather strap, gave it a scientific whisk across the bench, and asked :

" You see, judge, the quarter under this strap ?"

" What ! do you mean to say there is a quarter of a dollar there ?"

" Sartain."

" No such thing," said the justice.

" I'll go you a dollar on it," said the prisoner.

" Agreed," exclaimed the bench.

With accustomed adroitness the strap was withdrawn, when, lo ! there was a twenty-five cent piece !

" Well," said our Justice Shallow, " I wouldn't ha' believed it, if I hadn't seen it with my own eyes ! There is your dollar ; and you are fined five dollars for gambling contrary to the *statue* in such case made and provided."

In one of our New York city criminal courts, a poor woman, whose boy had been sentenced to a long term at the Penitentiary for some offence not very clearly proved, thus addressed the presiding judge :

" Won't your honor give him a shorter term ? He is a good boy to me, your honor—he always was. I've just made him some nice new clothes, your honor, which fit him beautiful ; and if you give him a long time to stay in prison, the clothes won't fit him when he comes out, for he's a growin' boy."

In the New York Times newspaper of the twenty-fifth of May, 1866, under the initials T. W. (no doubt, Mr. Thurlow Weed), we have the following illustration of a wrongful conviction : Some twenty years ago we received a letter from the District-Attorney in Schenectady, in which he said that on the eve of his expiring term of office he had been reviewing, in memory, his official acts ; and

there was one conviction about which his mind had never been at ease. It was the case of a negro convicted of stealing a wagon and horses from the Niskayuna Shakers and sent to Auburn prison for five years, three of which had elapsed. An inquiry was instituted which disclosed the fact that the colored man was a decent, industrious chimney-sweep, going from Albany to Schenectady on foot, when overtaken by a man in a wagon who asked him to ride. On reaching Schenectady, the man, saying he had to stop, told the negro to drive under such a shed and call for a bait of oats, which the horses might eat till he wanted them. When the Shakers, tracing their stolen property to Schenectady, learned that the negro had driven it under the shed and ordered the oats, they had him arrested, tried and sent to prison, where he remained until its keeper was instructed to inquire into the case. The negro not only protested his innocence, but informed the keeper how the real horse thief was an inmate of the same prison. This, on investigation, proved true. The rascal had been convicted on a subsequent offence ; and on being confronted with the innocent negro, related the facts just as the colored man had always told the story. He was pardoned ; but when he returned to Albany, he found his wife had died and his children were in the poor-house.

Some thirty years ago, a backwoodsman was arraigned at a Circuit Court of Oyer and Terminer for an aggravated assault and found guilty. The judge sentenced him to ninety days imprisonment, the last thirty of which he was to be kept in solitary confinement and on bread and water only. The prisoner, who lived in a region where luxuries were never known, and even the necessities of life were scarce, reflected a moment and then exclaimed: "Judge, say *wheat* bread and I'll go it !"

Judah Hammond, a judge of the Marine Court of New York, was a remarkably large, heavy, slow, black, phlegmatic man, but whose voice was scarcely more than a penny trumpet. He measured his words as precisely as a chemist calculates drops of a costly unguent. He would only now and then appear to be making a note or two and afterwards sit with his eyes closed. A case was going on before him and the plaintiff's counsel rested, although he

had not proved a contract on which the action was based, and the judge quietly and unobserved measured out upon his minutes the word *nonsuit*. The opposite counsel, not seeing the defect in the plaintiff's case, began to "open" and gave the court to understand that he was going into a great deal of evidence which would clearly show the whole transaction. "I guess," said Judge Hammond, with lengthened sweetness long drawn out, "you—had—better—not." But this made the advocate more strenuous and on he went; while the judge sat like a wise owl with eyes closed. Soon the injudicious counsel proved the contract of which the opposite side had given no evidence. The judge opened his eyes for a moment and in a passive manner marked deliberately upon his minutes, "Verdict for the plaintiff, \$100." When the testimony was closed, the judge said he was ready to decide the case; but this the impetuous lawyer for the defendant would not give in to and he claimed to address the court. And so he did, while Hammond again went into retirement and shut his "head-windows." After a vigorous and long speech, the counsel ended by saying that he had no objection now to the court deciding the case. The court opened its eyes: "I—decided—the—case—half an hour ago—and—gave a verdict—against—your—client—of—\$100."

While Mr. Frederic A. Tallmadge, always considerate and merciful, was Recorder of the city of New York, he, at a heated summer term, was quickly disposing of prison cases. A poor countryman was put on trial for passing counterfeit bank-bills. The case seemed a plain one. The prisoner was in tears and all he did was to protest innocence. Witnesses proved there were similar bills found on his person. He had no counsel. "Let me see the bill, clerk," said the Recorder; adding, "Mr. Hays" (then High-Constable), "fetch an intelligent money-broker." Hays returned with a Mr. Braisted, who was well known for his knowledge of paper money. On being called forward and shown the alleged forged instrument, he said: "I will give the face in gold for that bill, less an eighth per cent. discount." The others were shown to and examined by him, with like result. The prisoner, thus within a hair's-breadth of imprisonment for years, was acquitted and set at liberty.

In the District Court for the ——th district, there was an action of replevin for a cow. It was tried by a jury, who, after consultation, returned into court and the foreman handed up to the judge this verdict: "We, the jury, find the cow in the plaintiff." Without reading the verdict aloud, the court remarked that the finding was intelligible, perhaps, but somewhat informal and asked the foreman if the verdict was intended to be in favor of the plaintiff. The jury, one and all, responded that such was the intention. "Very well," said the court; "Mr. Clerk, you may enter a verdict upon the record in proper form and read it to the jury"—at the same time passing the very verdict as returned to the clerk, who looked at it and whispered to the judge. After consulting a moment, the clerk took his pen, recorded the verdict and read it to the jury:

"Gentlemen of the jury, hearken and answer. Is this your verdict as the court has recorded it? In the case of A—— v. B——, you say that you find the plaintiff in the cow."

"No, no, Mr. Clerk; that will not do!" observed the judge.

Again there was a whispering consultation between the two officials, after which the clerk resumed his pen and read to the jury:

"Gentlemen of the jury," *et cet.* "In the case of A—— v. B——, you say that you find the property of the plaintiff in the cow, and so you say all."

"No, no, Mr. Clerk; you misunderstand the direction of the court," said the judge.

The judge and clerk again put their heads together, and, being sure he was right this time, the clerk wrote and said:

"Gentlemen of the jury," *et cet.* "In the case of A—— v. B——, you say you find the property of the cow in the plaintiff, and so——"

No one about the court could stand this any longer and laughter got the better of judge and sheriff's officers. Pending the hubbub the justice wrote out the verdict properly and the plaintiff, with it, got his cow.

There was a judge not far from New York City—this was in

1836—who had wit enough, amid all his drinking and ignorance, never to commit himself by making an elaborate charge. Indeed, there never was a case wherein he spent more than fifteen minutes in speaking to a jury. He had a stereotyped form of talk. The shortness and peculiarity of his speech were akin to his appearance.

“Gentlemen, this is an action brought by the plaintiff against the defendant. You have heard the evidence on both sides; and the court know of no points of law that you may not be supposed to understand already. The case is a very plain one; and if, upon a careful review of the testimony, you should think the plaintiff entitled to a verdict, the decision must be in his favor; but if, on the contrary, it should appear that the defendant ought to be the plaintiff in this suit, you will please bring in a bill to that effect. I believe that is about all to be said in the matter. If you can think of any thing else that I ought to say, I have no objection to mention it. It is now my dinner hour. Swear a constable.”

It was reported in print that one of the judges in the interior of the State of New York, in his charge to a grand jury, congratulated it on the “growing decrease” of crime.

Sands gave a description of an enraged husband who had caught his wife in *flagrante delictu* with another man. An attempt was made to hush the matter up by a payment of two hundred dollars.

“Two hundred dollars,” exclaimed the abused husband, “two hundred dollars for blighted affections, ruined hopes, a dishonest name, disgraced offspring, life itself a burden! Two hundred dollars for all this! I can never consent—never, never! I must have more than that. Make it two hundred and fifty dollars!”

Mr. Sherman Brownell became a police justice in New York. He had great breadth of heart as well as of person and a common sense manliness which made him deservedly popular with the working classes. Presiding at the Petty Sessions, a little boy was brought forward for stealing a small ball of thread.

“Discharge him,” said Brownell; “took it to fly his kite with, I suppose.”

A man was arraigned for stealing fat from a bullock. He declared he took it to grease his boots.

"Well, then," said our justice, indignantly, "why couldn't you cut it out of the kidney, instead of spoiling a whole quarter? There was plenty of loose fat lying around to grease your boots with, without spoiling a quarter. Guilty: Penitentiary two months."

Another man was arraigned for the theft of a halibut weighing seventy pounds.

"Now," exclaimed his honor, "the idea of a man picking up a fish weighing seventy pounds from the sidewalk and walking off with it! Why, he'd 'ave had to back up a cart and take it—seventy pounds! Let him off light."

In the Mohawk Valley lived a well-to-do Dutch farmer. He was made a justice of peace. Almost his first business in this line was to issue a summons in behalf of a neighbor in an action of debt against a person who was not one of his constituents. On the parties appearing, the justice looked sternly at the defendant and said:

"Sir, I am zorry we should meet for the first time under such painful zircumstances. Sir, you be sued."

"Why, yes, sir," the defendant responded, "I believe I am; but I hope to introduce witnesses who will swear—"

"Schtup, schtop!" cried the justice, "I will not have any schwearing in dish court. Vot did he sue you for, if you didn't owe him? I give shudgment for de blaintiff."

In further illustration of Dutch justice:

Hans Von B—— was a magistrate of Rensselaer County, in which Lansingburg is situated. Two of its inhabitants went over to Cohoes and there imbibed and fell to fighting one another. On getting home and sober, although they vowed vengeance against each other, neither dared enter a complaint. But Justice Von B—— heard of it. He sent a constable for them. They mutually retained Mr. Harvey of Troy, for they were now on one side; and he told the justice how he had no jurisdiction, as the fight occurred in another county.

"Haven't I a right to settle my neighbors' quarrels when they go over the river, get drunk and break von anoder's heads?"

What for I am justass of *peace*, sir? I fine dem five dollars apiece and tō go to jail till they pay their fines, sir; and you go to Troy, sir, and don't come here again to tell me what for I am to do with my neighbors when they get to fight and I a justass of *peace*."

To jail they went. When they were out, their lawyer brought an action against our Dutch justice for false imprisonment; and a verdict of two hundred and fifty dollars was recovered. Whereupon our judicial functionary swore a broad Dutch oath, to the effect that he would let people in adjoining counties settle their matters in their own places.

A few months afterwards, a couple from Albany with a sleigh-load of friends, came in the middle of the night and, wishing to get married before they returned, called the same justice out of bed and brought him to their hotel. When he found out what they wanted, he demanded from where they came and, learning they were from Albany, he refused to proceed with the matter.

"No, no," said he, "it has been decided I have no jurisdiction over the peoples in Albany County; and you can just go back where you came from and get married and I will joost go back to mine bed."

A distinguished member of the New York Bar was retained on one occasion by a friend, also a New Yorker, to attend to a complaint made against him before a New Jersey justice for an alleged assault and battery upon one of the residents of the old Jersey State.

"I appear for the prisoner," said the counsellor.

"*You* abbears for de bris'ner, do you? And who den be you? I ton't knows you; vair be's you come from and vot's yer name?"

The counsellor politely gave his name, adding—

"I am a member of the New York Bar."

"Vell den," replied the justice, "you gan't bractis in dis here gort."

"I am a counsellor of the Supreme Court of the State of New York."

"Dat makes not'ing tifferent."

"Well, then," said our baffled brother, "suppose I show to your honor that I am a counsellor of the Supreme Court of the United States?"

"It ton't make a pit petter; you ain't a gounsellor von de State of New Jarsey and you gan't bractis in dis gort."

It has been observed, this decision accounts for the fact that New Jersey is not in the United States.

At a time when three justices, one presiding and two associate, formed the Circuit Court, Robert Earl was appointed associate justice for Genesee County; and owing to the illness of the presiding judge, Earl was obliged to give the opinion of the court. There was a case of assault and battery, *Indian Joe v. White Citizen*. Case called and motion made to quash proceedings, Joe being an Indian. The opinion of the court was given as follows:

"If so be Injuns is folks, the ditement must stand; but if so be Injuns ain't folks, the ditement must squash."

This is hardly equal to a late case in Carroll County, Tennessee. A preliminary hearing was had before a county magistrate in the case of a man charged with stealing corn from a neighbor's crib. The evidence went to show that the man had been found with his hand in an aperture in the crib safely fastened in a steel-trap, which the owners of the crib had set for the purpose of catching the thief who had been preying upon his grain. It was, also, in evidence that two empty corn-sacks were found lying at the feet of the entrapped individual. The decision of the magistrate was, that there was no proof of the prisoner's having stolen any corn; and, as to being caught in a steel trap, any gentleman had a perfect right to stick his hand in one if he felt inclined to do so.

The case of *Jackson ex-dem. Cooper v. Browner* (7 *Wendell's Reports*, 389) presents an interesting specimen of judicial English. Transcript:

"*Samuel Cooper vs. fretrick Browner*. This 25. day of November 1824. Summons redarned bersonal served in a plea of—of fifty dullows and issue gind and the parties was rety for trial and

witness swearn and gudgmand fur the plaintiff on a former gudgmand fur twenty-six dullows and twenty-six cents. Damiges \$26.26. Corst of suit 72. \$26,98. I hereby cartify that the apove copy is a correckt and true copy of my pook. Guven unter my hand at seal at Danube this 18. day of January, 1825."

Signed by the justice who rendered the judgment. The Supreme Court, Nelson J.:

"The transcript is written in bad English and probably worse Dutch, and so far is liable to the criticisms made upon it, but the essential parts of it are sufficiently intelligible to answer all legal purposes."

There was *gudgmand* for the plaintiff.

This is hardly equal to the following *return* to a writ of *fi-fa*, made by a Dutch sheriff of one of the interior counties of Pennsylvania in 1835 :

"Dere is no gutz to be found in my Bellywack."

In a town in Western New York a man was convicted for some high offence, and sentenced to fifteen years imprisonment at Auburn. The opportunity being given, the convict, with a seemingly puzzled look, rose and said :

"Squire, I hain't had much 'sperience in such affairs, so I'll jest ask you a question : If I shouldn't live the time out, shall I be obleeged to furnish a substitute ? 'Cause if I shall be, I don't know a better man than your——"

"Remove the prisoner !" said the judge.

It goes hard with one to stop a newspaper and with some people to pay for it. In one of our upper counties a wealthy man, but with a bad habit of not paying, had taken a weekly paper for fourteen years, but owed for the whole time, although repeatedly dunned. Action brought; and the proprietor of the periodical had a verdict.

"Well," said the debtor to the plaintiff, as the foreman of the jury announced their decision, "you think you've done it, don't you ?"

"Why, yes," said Mr. Editor, "I think we have got the start of you a little, squire."

"So do I," responded the defendant; and, taking out a plethoric pocket-book, he counted out the amount of the verdict and costs; laid it upon the table; then throwing a two-dollar bill across it to Mr. Editor, he said—"Send along your old, good-for-nothing paper!" and majestically left the court.

At a period when Judge Ambrose Spencer was on the bench of the Supreme Court of New York—this is upwards of forty-five years ago—there was on Staten Island a lawless set of men engaged in villainous wrecking and kindred pursuits, to such an extent as to lower the morality and standing of the island in universal estimation. Judge Spencer, presiding at a circuit held there, was trying a man who had committed some gross and high crime. The evidence was clear in proof of his guilt and his honor charged strongly against him. The jury, however, brought in a verdict of not guilty. The large and commanding figure of the judge rose and towered itself to its full height: "Prisoner," said his honor, in the severest and loudest tones, "I have to address you in two directions; firstly, you have had a most extraordinary escape from condign punishment which you deserved; and secondly, you may be assured the time will come when you will be tried at another bar, where, it is some satisfaction even now to know, there will be no Staten Island jury to acquit you."

Is it possible that Judge Spencer, when he uttered the last sentence, had met with and there was floating in his mind what fell from the Right Reverend Bishop Coppock, who was in the English rising of '45 and sentenced to death? The bishop made a long sermon or speech at the place of execution, prayed for King James and his son Charles and all the rest of the Stuart family, called King George a usurper and then gave a sermon to the sheriff. He behaved very boldly on his trial. When he was going from the bar, after having been found guilty, he said openly to the other gentlemen prisoners: "Never mind it, my boys; for if our Saviour were here, these fellows would condemn Him." And seeing one drop tears when he received sentence, he said—"What are you afraid of? We shan't be tried by a Cumberland jury in the other world."

Barnard gives the following well-written and powerful character of Chief-Justice Spencer :

“ Ambrose Spencer was called a stern judge. He was as stern as Justice is and not more so. Crime, fraud, vice, cruelty, injustice, oppression, violence, breach of faith, breach of honesty and breach of law—these, as they appeared before him, never escaped the visitation of his just indignation and his stern rebuke. Ignorance and folly, if now and then he met such at the Bar where he had a right to look for something better, were not apt to escape his frown of displeasure or of contempt. With a large frame and a commanding person, tall, straight and well knit together, and with a countenance indicative of strong thought—not cold and abstract, but deepened with feeling not less strong—forming altogether a presence of uncommon dignity and energy, it certainly was not a light thing to encounter his displeasure. The character for stern justice and rigid impartiality which he bore was apt to make his displeasure felt as something only too well deserved; and it was the more justly to be dreaded from the uncommon command he had over the most forcible forms of expression which the English language could supply and which seemed to possess extraordinary vigor and intenseness when he was dealing in rebuke. Many a culprit, I doubt not, has felt his crimes to be really enormous for the first time under his awful reproaches. But if he was a severe, he was also a just and humane judge. He had a great admiration for talent as he had for honesty and goodness and truth. He detected the indications of merit and ability at the Bar among its junior members as they presented themselves there with that quick perception which was so characteristic of him in all things and he was prompt to lend to all such his countenance and encouragement. There was, too, in him, behind an exterior sufficiently austere and rigid, a deep well-spring of natural affections and amiable and benevolent dispositions ; and never was the rock struck on any just occasion that the fountains did not flow. The tenderness of his nature was easily stirred, and was often stirred, and that, too, from uncommon depths. In his judicial capacity, however, it was the peculiar and commanding strength of his intellectual

powers which chiefly made him a man of mark and gave him his superiority. His mind was remarkable for the quickness of its perceptions, for its penetration and its comprehensiveness, for the ease with which it would master the most complicated details and bring order and light out of confusion and darkness. His mind was not of a nature to creep to a conclusion; he strode to it by the directest way and by a kind of giant tread. No lurking fallacy in the statement, argument or opinion of another could well escape the detection of his keen and scrutinizing glance. If the logic of a thing was wrong, however plausible it might be, it seemed as certain to meet exposure from him as if it was wrong in principle or morals. His judicial opinions may well be taken as models in that kind of composition; clear in statement, expressed in vigorous yet unaffected language, presenting usually a single point or view on which the whole case must turn; the reason carried on with equal acuteness, precision and brevity, with a rigid exclusion of all matter not essentially belonging to the case or the argument; quoting authorities sparingly but with admirable discrimination; and when his conclusion is reached, stopping short and leaving the principle developed and decided, standing out in high relief from the case as a fixed and permanent landmark of the law. Such was Chief-Justice Spencer."

Something in the same direction—in the direction of a Staten Island jury, of which we have given an illustration in a prior page—although not with quite so sharp a point, took place at the Oyer and Terminer at Richmond in January, 1817, on the trial of Christian Smith for murder. Judge William W. Van Ness presided. The case caused so much excitement that the Court-room was found too small and an adjournment was had to the church. Judge Van Ness charged the jury that the evidence would warrant a finding of guilty; but on that subject they were the judges of the law and fact; but he could not forego advising them that the evidence afforded the prisoner no chance of escape. His conduct before and after the commission of the crime had been brutal and barbarous in the extreme, and he was not a safe member of society. The jury were out seven hours and on their return pro-

nounced a verdict of not guilty; whereupon the judge thus addressed the prisoner:

"Christian Smith, you have been tried and acquitted by a jury of your country for having taken away the life of one of your fellow-creatures. I mean not to censure the jury who acquitted you; it is not my province so to do. I hope they will be able upon future consideration to reconcile their verdict to their consciences. But I should feel myself wanting in my duty as a man if I did not express my opinion that, notwithstanding their verdict, I consider you a guilty, very guilty man. Upon an ancient grudge you considered yourself justified in doing what you have done; and the jury have, I fear, confirmed your false and fatal judgment. But beware; you have not yet escaped. Believe me, your most awful trial is yet to come. You are now an old man and your days must be few in this world; and you will shortly be compelled to appear before another court where there is no jury but God himself. Unless you repent and devote your future life to an humble atonement of your guilt, your condemnation is certain. I am thus plain with you, in order that those who have listened to your trial may learn that, whatever may be considered to be the law of Staten Island, your conduct is unjustifiable in the sight of God and man." (*1 Wheeler's City Hall Recorder*, 77.)

In the New York Court of Sessions (1840), the District-Attorney directed the clerk to arraign a negro, named George Williams, for trial on an indictment for grand larceny. The accused was asked whether he was ready for trial.

"For what, massa?"

"For grand larceny."

"Oh, yes, massa, I'se ready for dat."

The trial was had, and the jury, on the evidence, convicted the negro. Whereupon, the clerk of the court said, "Stand up, Williams." He did so. "Williams, you have heretofore been indicted for grand larceny and on your arraignment you pleaded not guilty, and put yourself on the country for trial, which country has found you guilty; what have you now to say why judgment should not be pronounced against you, according to law?"

"Oh, golly, golly, massa ! I am not de grand-larceny nigger; I'se de petty-larceny nigger—toder darkie in de prison dar is de grand-larceny nigger, massa, not me !"

On sending into the prison, it turned out that another colored man, bearing the same name and really the "grand-larceny nigger," was there. The court, thus in a quandary, let both the colored gentlemen go.

In 1846, Prudent Rosier, a Frenchman, was arraigned in the Circuit Court of the United States for the Second Circuit, held in New York, charged with larceny upon the high seas. Mr. Henry L. Clinton was assigned by the court to defend him. Rosier had smuggled himself on board a packet-ship at Havre. He was not discovered until the ship had been several days at sea. Watches, to the value of some six thousand dollars, were stolen from a passenger. Search was made and they were found in possession of Rosier, in the hold of the ship, where he had concealed himself. In his possession he had tools, which policemen testified on the trial were burglars' tools, and leather covers or cases in the form of bound and lettered books. Rosier said they were to enable him to smuggle watches. And he had a dark lantern. A plea of insanity was interposed. This had first to be tried. Judge Betts presided. Mr. Clinton was opposed by Mr. Benjamin F. Butler, United States District-Attorney. The theory of the prisoner's counsel was, that the prisoner, although mentally sound in all other respects, had a *monomania* on the subject of perpetual motion. Witnesses on both sides were called. On the part of the government, the officers of the ship and passengers testified that the prisoner was remarkably free from any exhibitions of this and all kinds of insanity ; had confessed his crime ; and endeavored to dissuade them from appearing against him. Also, that he had tried to buy off the captain of the ship, telling him he would enlist in the army and give him his advance pay, if he would not, on the arrival of the ship in New York, hand him over to the authorities. Finally, and when all entreaties of this kind proved fruitless, he told the captain he would escape conviction in spite of him. The burglars' tools and dark lantern found in the prisoner's possession

were exhibited to the jury, also the false books, which, singular as it may seem, were labeled "Medical Jurisprudence." On the part of the prisoner, witnesses, who were fellow-prisoners in the Tombs, testified that he talked of nothing but "perpetual motion;" he believed or affected to believe that he had at last discovered this great secret; that he could now construct to an unlimited extent perpetually-going motion machines; that the result of this discovery would be to overturn the ordinary modes of industry, throw hundreds of thousands out of employment, dispense with almost all manual labor and revolutionize the world generally.

Mr. Butler, in his argument to the jury, contended that there was no approach towards insanity or monomania in the evidence and the idea of it was preposterous. He made a searching review of the evidence; and dwelt at length and with great force upon the law applicable to monomania. On the other hand, Mr. Clinton, in addressing the jury, contended that the evidence showed the prisoner was laboring under it on this subject of perpetual motion. He laid great stress upon the declarations of the prisoner, testified to by the prison witnesses, and claimed that the only way to show a disordered intellect was, by proving conversation, declarations and conduct; and he cited a large number of authorities, holding the doctrine that if the monomania be connected with the act for which a man is tried—that is, if the act be the offspring of monomania, then the accused is exempt from criminal liabilities; and the counsel maintained that Rosier stole the watches for the purpose of disposing of or experimenting upon them in connection with his insane delusion as to perpetual motion. Here, it was insisted, was a connection between the monomania and the criminal act. Judge Betts charged strongly against the prisoner. The jury, however, after being absent some ten minutes, returned into court, and rendered a verdict that the prisoner was insane!

The result of this verdict was, the government could not try the prisoner until his sanity should be restored. He was remanded to the United States jail, with a view to send him to an asylum, as the law required on such a verdict. A few days afterwards a hole was discovered in the roof of the jail,—the prisoner, by means of a

rope, had let himself down and escaped. A jury of his peers having decided that he was the victim of "perpetual motion," he, perhaps, thought it not congenial to his manifest destiny to remain stationary.

A remarkable case of cool-blooded fighting and treacherous wounding, not common in the State of New York, occurred at Cherry Valley, in 1859. We cannot better illustrate it than by giving the testimony of witnesses on an indictment against Henry Nelson, who kept a saloon there, for assaulting Richard Allanson with a knife or "a certain sharp, dangerous weapon."

Richard Allanson, the assaulted party, testified: "I went into Henry Nelson's saloon in Cherry Valley on the night of the 25th day of December, 1859, and sat down there; defendant came and said he could whip any man or any two men who insulted his woman. After some conversation, I told defendant I thought he could not whip me; he said he could or would, and if I would step out in the street, he would try, and we went out. Defendant then said he would not fight any more in the street, but would go into a room where we could fight it out alone; we concluded there was no room to be had that night and so we agreed to meet the next morning at nine o'clock, at Henry Nelson's saloon.

I went back to the saloon next morning, as agreed, about nine o'clock, and sat down and was there about ten minutes, when defendant came in. When he came in he said, "Good-morning;" Dick and I said "Good-morning" to him. He then said the time is most up; he said he did not know where we could get a room, unless we went to John Story's. I told him I thought we could get a room nearer by; and then one of us said, "Let's go and see," and we started out and went towards Bates's building, and we went up in the third story. The door was locked. I said, "I will go and get the key to Kinne's shop." I went then and saw Kinne and asked him for the use of that room for a few minutes; and Edward Peatt took the key and unlocked the room and we all three went in. Peatt said, "Well, I guess you won't want me here," and went out. Nelson took the key and locked the door, and we both stepped into the bedroom joining and took off our coats and came

out in the main room. Nelson asked if the harness should be removed and the stove and the chairs? I said, "No, there will be no necessity for removing any thing but the chairs." I then took hold of one or two chairs and walked into the bedroom and set the chairs down, and turned to come out—and that was the last I knew. The next I recollect of was being at home at my father's house; the first day I remember of, after that day, was the fourteenth of January. The fight occurred on the twenty-sixth day of December, 1859. My father lives about a mile from the village and is a farmer. The defendant is not a married man. I understood we were to have a fair *knock* down.

DeWitt C. Bates: I went to my office at 9 A. M. I heard a noise above, pretty heavy and solid, like throwing down a heavy body on the floor. It attracted my attention. Then I heard a most unearthly and terrible and forced groan, between a loud scream and a groan. I listened an instant and heard it once or twice. I went up stairs into the third story. I went to the door, which was locked, heard no answer, when I called to him again to open the door. While I was at the door, Mr. Cooper came up and suggested breaking open the door; and we broke it open and both entered the room. Allanson's head lay within a few feet of the door. I did not know him; his face and bosom were covered with blood. His face was badly disfigured; he was apparently dead. I had known Allanson from his boyhood; but I did not know who this person was on the floor until defendant spoke his name. There was a spasmodic action of his head and breast. Defendant then stood in the middle of the room, covered with blood; and said, "I have done it. I have whipped him; it was fair play; ask Dick, and he will say so." The sheriff then came in and took defendant out of the room. Nelson was taken before a Justice of the Peace; and I appeared and made the complaint.

George C. Clyde testified: I went up to the room after the affray was over and found a man there called Allanson and the doctor. I felt something under the carpet in the bedroom with my foot, and stooped down and picked it up and found it was a large knife.

This knife was here produced and proved to have belonged to Nelson, and had been made for him.

A medical witness gave evidence that the wounds upon the deceased were not made with a fist, but could have been caused by a dull knife.

Nelson was found guilty, and sentenced to imprisonment at hard labor in the State Prison at Auburn for two years. (Nelson v. The People, 5 *Parker's Crim. Rep.*, 39.)

John Van Alstine, of Sharon, Schoharie County, committed a brutal murder, for which he was tried and sentenced to be hanged. The rope broke or gave way after he was swung off; when he raised a legal question, asking the sheriff if he had a right to hang him twice?

This was a natural question. The man did not understand there had to be an execution of the *sentence*, which was that he should be hanged "until he was dead." An old lady, knowing only the popular meaning of the word "execution," and who had a lawsuit pending, once sent in a hurry for her clergyman.

"I have but a few weeks to live," said she.

"My dear madam, I never saw you look better."

"Read that." It was a letter from her attorney:

"DEAR MADAM: A line to save post. The verdict is against us, and execution next term. "Yours, &c."

The following is the title of an English book:

"A murderer punished and pardoned: A True Relation of the Wicked Life, and Shameful Happy Death of J. Savage, *twice executed* at Ratcliff, 1688."

There have been cases in Great Britain of hanging without total extinction of life. In one, an old one, 1363, the culprit was ultimately exiled; in a later, the criminal was transported. At Cork, Ireland, 1766, a tailor named Patrick Redmond, after hanging exactly nine minutes, was cut down. An actor named Glover succeeded, by dint of friction and fumigation, in restoring circulation and bringing him to life. He rose, got drunk and went that night to the theatre to return Glover thanks, to the consternation and

horror of the audience. He was the third tailor who had outlived hanging during ten years. Who will say after this that a tailor is but a ninth part of a man? Have our readers observed how tailors at concerts applaud and in mixed musical parties almost always sing warlike songs?*

By the way, we remember an old firm of tailors in New York, composed of three partners; the senior being a general, the middleman a colonel and the junior partner a captain. A man fresh from England took a piece of cloth to them; and accosting the first he came to, said, "I want to order a suit of clothes."

"Oh, sir," was the response, "the *General* takes orders."

The General having taken and noted down instead of giving out the orders of the day, our customer said:

"Be so good as to measure me."

This the General did with his eye, but added with his tongue, "The *Colonel* measures." When measures and not men had been considered:

"Now," said the Briton, "I want to see you cut my coat according to my cloth."

The Colonel pointed commandingly to his junior, and observed, "The *Captain* cuts out."

Our man from over the water had been used to order things there differently and was by this time nettled as well as tickled. So, in going out, he turned, took off his hat and bowing low, said:

"General M——, and Colonel M——, and Captain W——, you will do me the great honor to send home my coat, waistcoat and trowsers by Saturday night without fail."

* Raikes, in his Journal, has a calculation based on the sayings, "A cat has nine lives," "Nine tailors make a man," which reduces a tailor to zero:

$$\text{If } \left\{ \begin{array}{l} 1 \text{ cat} = 9 \text{ living men,} \\ 1 \text{ man} = 9 \text{ living tailors.} \\ 9 \text{ cats} = 9 \times 9, \text{ or } 81 \text{ men.} \\ 9 \text{ men} = 9 \times 9, \text{ or } 81 \text{ tailors} \\ 9 \text{ cats} = 81 \times 81, \text{ or } 6,561 \text{ tailors.} \end{array} \right.$$

CHAPTER VIII.

LAW PHRASES.—PECULIARITIES OF NAME.—ERRORS OF SPEECH AND IN TYPE.—COSTS.—COUNSEL FEES.

A poor tenant in New York, the victim of a grasping landlord, went to a counsel of standing and said: "What is the law when you can't pay all your rent on quarter-day?"

Now this was at a time when a man's furniture and effects could, under an authority known as a distress for rent, be seized and sold in satisfaction or, in default of effects, a tenant be dispossessed.

"Can the landlord," continued the man, "turn the family into the street?"

"Unless," responded the advocate, "there is sufficient distress on the premises, he can certainly do so."

"Oh, if that will stop him," exclaimed the tenant, "he'll find *distress* enough on my premises: for my wife has a little baby only a week old; two of the younger children are ill, with nobody to take care of them but a sister not much older; and work as hard as I can—when I can obtain work—I can scarcely get enough for them to eat."

Here, indeed, was "distress" enough to satisfy all but a grinding landlord.

A certain eminent physician in New York was sued for malpractice in the treatment of a wife. The injury was proved and the plaintiff rested. The defendant's counsel thereupon moved the court to grant a nonsuit on account of the statute of frauds; for here was a charge against his client in damages to an amount exceeding fifty dollars for the "miscarriage of another person" and there was no agreement in writing. This anecdote was afterwards told in the presence of Justice Nelson, who had been the presiding judge, and the teller chose jocosely to insinuate that the nonsuit

was granted ; but his honor said that was an interpolation by the gentleman.

There was a member of the New York Bar who could not pronounce *v* or *w* rightly. Now, with Sam Weller this sort of thing is charming ; for it is as though Sam himself purposely tongued them into distortion for the fun of the thing, but not so with our brother, for he was as solemn in his manner as Job Trotter. He had an unfortunate propensity to interlard a summing-up with quotations ; and these often, through the way the *v*'s and *w*'s rattled about, came out like broken tea-sets. Once he brought in *arma, virumque cano*, or rather, with him, it was *arma, wirumque cano*. His opponent was Henry M. Western, who could not properly use what is called the dog's letter—*r*. (From the dog using it so much gutturally when growling and snarling—*r-r-r*. The French, when excited, give full force to this letter. A Frenchman who considered himself very much insulted, and being very angry, cried out in his wrath : "I blow your nose, you *r-r-r*-rascal!") The latter (we mean Western) in reply, attempted to quiz his opponent, and in giving the same words made it, *arma, viwumque cano*.

Mr. William H. Maxwell, of the New York Bar, so long known as acting in criminal matters for the people under his brother, Mr. Hugh Maxwell, when District-Attorney, and also remembered as having killed a brother lawyer named Price in a duel on the fatal ground where Hamilton fell—a duel arising from a foolish quarrel about a worse than foolish woman—was a candidate for some military office, but withdrew from the contest. Governor De Witt Clinton, meeting him, expressed his regret at the withdrawal, believing that he might have succeeded.

"The thing, Governor," responded Maxwell, "was impossible. I found my opponent was able to spell *manœuvres* with three *wa*. From that time I considered him invincible and withdrew."

A gentleman of the New York Bar, well educated and a classical scholar, intended to speak of the poisoned shirt of Nessus, but inadvertently attributed it to Nemesis. Mr. Gerard, who was opposed to him in the case wherein it was used, called the attention of his antagonist to the error and reminded him

that the Goddess of Anger did not wear a shirt but a—another kind of garment.

Another eminent and eloquent lawyer of New York, more conversant with Blackstone than the Bible, exclaimed recently when summing up a case before a jury: "I have always admired that beautiful expression in the Lord's Prayer, 'Do unto others as you would have others do unto you.' " The gentleman seemed astonished at the smiles which followed, and it is a doubt whether he has to this day learned the cause of them.

We heard Judge Wells say that a lawyer in his presence, expatiating on the glorious things which were in the Bible, declared the finest passage in it to be: "An honest man's the noblest work of God."

It has been remarked that in *Blunt v. Whitney and Others*, 3 *Sandf. N. Y. Superior Court R.*, page 4, the court held that where a cause "was referred after issue by a rule of court to three referees, to be heard and determined by them *on legal and equitable principles*, the cause was thereby *taken out of court*." And it was therefore suggested that counsel, when they consent to a reference, should be cautious and insert in the rule a provision that the referees decide contrary to law and equity; they will thus obviate the difficulty and *keep in court*.

There is a peculiar erratum in the New York edition of *Beames on the Writ of Ne Exeat*, in note *h*, page 34. Our friend, the estimable editor, is made to assert through a blunder of his printer that in the Court of Chancery of the State of New York, "a bill for a *ne exeat* must in all cases be *versified*."

Several years ago we had a simple-minded young married client, whose wife filed a bill in the Court of Chancery of the State against him for an absolute divorce on the ground of adultery. On demand and receipt of a copy of the bill of complaint, we sent for our unsophisticated-looking client and, opening and referring to the charges contained in it, the allegations being that at such a time in such a street in such a city he was intimate with Mary Ann, and at another time in another street with Sarah Jane, etc., we asked him what we should say about all this in his answer.

"Oh," said he, "that's all true! But is that what you lawyers call adultery?"

"Certainly."

"Why," exclaimed our innocent, "I thought adultery meant sleeping with another man's wife!"

Mr. Isaac Ketchum was an attorney in New York City and so was Mr. Uriah Cheatham. They went into partnership and over the door of their office was their firm-name—Ketchum & Cheatham. Now this was felt to be risibly significant and they determined to change it. In the simplicity of their legal hearts they varied it thus: I. Ketchum & U. Cheatham.

In the village of Blakeney, Gloucestershire, England, there are three persons living in three adjoining houses whose names are Steele, Penn and Holder, respectively.

In 1857, a man named *Plato*, of Niagara County, was found guilty of quarreling and fighting in a public place and sentenced to three months' imprisonment and a fine of twenty-five dollars. In this case Plato certainly could not have reasoned well.

More than ten years ago in the city of New York there were two lawyers whose names were Lee—one high and the other low in the profession. At a public dinner an advocate was called on for a sentiment. It was in the heel of the evening and he had "a cold id 'is 'ed." He gave the following: "I propose, gedlemen, the eds'ing *sediment*: The Lees of the Bar of our city."

Mr. Joseph Blunt had a free-and-easy and somewhat confident air about him; and although there was great amiability and really no rudeness or roughness, yet a seemingly honest mode of action perhaps gave him, at times, a forward manner. Randolph of Roanoke, who claimed his descent from (to use Tom Moore's rhyme)—

"— such a copper front as
Pocahontas,"

abrupt and often rude in speech, was receiving his admirers on the platform of the Astor House in New York, between stated hours. A want of punctuality was, perhaps, a weakness with Blunt. As Randolph was retiring from excessive introduction and pressure of hands, Mr. Blunt appeared: "How do you do, Mr. Randolph?"

very glad to see you, Mr. Randolph! I beg to welcome you, Mr. Randolph, to New York. My name is Blunt, Mr. Randolph." The descendant of Pocahontas fixed his Indian eye upon him, turned upon his heel, and merely said, "An appropriate name, sir."

A case was lately argued in one of the courts of New York, on a promissory note, or rather check. The counsel for the defendant insisted that the check had been given more than a year before it was presented and that the plaintiff was concluded by his laches.

Plaintiff's Counsel.—"That is a mistake. It is admitted in the pleadings and appears from the testimony that the check was given only a short time before presentment, but was dated, by mistake, a year earlier than the year in which it was given. We claim interest only from the time when the check was actually paid."

Defendant's Counsel (excitedly).—"Dated! given! Why, dated is given; it means given. It is derived from the Latin *dato*, to give."

Plaintiff's Counsel.—"May it please the court, though my classical reminiscences are none of the freshest, I doubt if my memory could recall such a Latin word as *dato*, signifying to give. The counsel's Latin is worthy of the erudite Mr. Squeers, of Do-the-boys Hall, who instructed his pupils, in one of the rare intervals of their education, that *quadruped* was Latin for a *beast*."

Defendant's Counsel (who had been corrected in the meantime by a neighbor).—"Do."

Mr. John W. Edmonds said he had a will laid before him which contained the following highly intellectual clause: "I will and bequeath to my beloved wife and children, namely, Teressa Donellan (her and my two sons), John Donellan, and William James Donellan, all my goods and chattels now in their possession in the city of New York, share and share alike, together with my landed property, lying and being situate on the westerly side of Wood Road, in Staten Island, in the county of Richmond (State of New York), all which now stands recorded in Richmond County courts (reserving the sum of eight pounds sterling to myself, for the use of my burial, which sum is to be sent to Ireland to my father and mother, after my death, by my executors)."

We see in a late New York newspaper, an advertisement that all claims against *Nova Zembla* Johnson should be sent in to *Adamantine* Johnson, administrator.

Judge William J. Bacon, of the Supreme Court of New York, was presiding on a trial, when a Mr. Gunn was called as a witness. He hesitated a good deal, and seemed unwilling, after much persistent questioning, to tell what he knew, whereupon the judge said, "Come, Mr. Gunn, don't hang fire." And after the examination was closed, his honor added, "Mr. Gunn, you can go off now; you may be discharged."

Mr. B——, a *frank*-hearted lawyer of New York, of Hibernian birth, had an unlicked countryman as a client, who was party in a suit in the Superior Court of the city of New York. It is unnecessary to say under what circumstances the action was ended; but on its being closed, and B——'s client in his office, the latter was given to understand he had to pay seventy-three dollars and forty-two cents costs. "And is it seventy-three dollars and forty-two cents! Divil a hit am I going to pay seventy-three dollars and forty-two cents! And I'd be after asking you, Mr. B——, what for these seventy-three dollars and forty-two cents?"

Mr. B—— told him "they were costs of the court."

"And now be after telling me what you mane by costs of the court?"

"Come to me," responded B——, "on Friday morning, precisely at eleven, and I'll show you."

He came, and B—— took him to the General Term of the Superior Court, where sat "all in a row" the seven judges: Chief-Justice Oakley in the middle, with brow severe and spectacles on nose; Judge Bosworth, with his handsome white locks; Judge Hoffman, showing age and gentlemanly pleasantness battling together, and the four other judges, with their respective characteristics.

"You see," said Mr. B—— to his Terence, "those seven solemn men, all in chairs, looking down upon us?"

"And indeed I do."

"Those are the court; and now I ask you, how long you sup

pose those seven buffers would take to get rid of seventy-three dollars and forty-two cents, costs of the court?"

"Mr. B——," said the client, with the most convinced expression, "I am entirely satisfied; you shall have the seventy-three dollars and forty-two cents, costs of the court, immediately."

In 1848, an English detective arrived in New York, in search of a man who was charged with absconding from Ireland with five hundred pounds sterling, belonging to the poor-house of a parish. The officer engaged a police-officer to ferret out the runaway; and, after much trouble and search, he was discovered in the State of New Jersey, where he had purchased a farm and its stock for two thousand dollars. When the fact was ascertained, the New York officer, by an ingenious trick, decoyed the accused into New York; and as soon as he put his foot there, he was taken into custody and detained in the prison known as the Tombs. The English officer was introduced to a lawyer, Thomas Warner, whose after movements made it wise for him to settle as far off as the vicinity of Botany Bay. After several weeks' manoeuvring, the Jersey farm, with all its live and dead stock, was sold for eight hundred dollars, being bought by its original owner. The English officer congratulated himself on the idea of receiving this from Warner, and, so, going back with flying colors. But the next thing was a settlement with his attorney. The latter rendered his bill: total, eight hundred and forty-five dollars, just forty-five dollars more than the whole amount recovered—bringing, of course, the English officer in debt this balance—to say nothing of his expenses in coming, staying and departure. He paid the forty-five dollars and hurried off by the first ship, in the fear he might have another Warner, in the shape of another bill.

There was a case determined in 1848, in Wyoming County, New York, which had been pending three years. It was an action brought to recover twenty-five dollars, the amount of a note for a horse. The verdict was ultimately rendered for the plaintiff in the amount named, with the sum of eight hundred dollars as costs.

A suit is reported in the New York books which shows how small a matter may be extensively litigated. A man named

Daharch had employed the plaintiff, Bell, to mend a shoe and a pair of boots. The latter had charged for the whole work one dollar; but of this fifty cents had been paid, and the action was brought for the balance—fifty cents. The defendant, one Fay, denied he agreed to pay for any thing except the work done on the boots, and insisted that the promise to pay for repairing the shoe, even if proved, was void as a verbal undertaking to pay the debt of Daharch. When the promise was made, the boots were with the plaintiff, who had a lien upon them as security for their repair; but the shoe had already been mended and sent home, and as to that the lien was gone. The case went to the Common Pleas and afterwards to the Supreme Court. (*Fay v. Bell, Laylor's Supplement, 251.*)

Some years ago a young lawyer opened an office in a little hole about as large as a dry-goods box in the vicinity of Wall and Nassau Streets, New York. After a time he was employed in a suit and by his indefatigable perseverance got a judgment for \$1,250; but the defendant had nothing wherewith to satisfy it. Afterwards this defendant came across the young lawyer and stopping before a vacant lot expressed his admiration at the zeal and talent displayed against himself, and added that if he ever had any law business he would employ this gentleman. A number of laborers were in the vacant lot digging out a cellar preparatory to the erection of a large house.

"Look there," said the young limb of the law, "look there! Some evening a gentleman will come along and fall down the cellar; and he will cry out and be taken to the City Hospital and receive a handsome amount by way of damages."

"Do you think so?" asked this defendant, and added: "Why this lot belongs to the very man for whom you got a judgment against me."

A few nights afterwards groans were heard from the cellar. Lights were obtained and on examination the aforesaid defendant was found, with his arm broken, shoulder dislocated and under-jaw displaced. In this miserable plight he was conveyed to the City Hospital. The young lawyer called on him there, found him en-

veloped in bandages of lint, an ornament and honor to the bad-fracture department. The whilom defendant told him that, most unfortunately, the workmen had, without his knowledge, continued their operations and made a sub-cellar ; and instead of falling upon soft sand, as he expected, he struck upon solid timber and bounced off into the chasm below to land on a pile of "blasted rocks."

"It will be all right in a few days," said our brother ; "the damages will be immense."

"And so they ought to be, for I have suffered immensely. I have laid weeks beside the victims of all the broken limbs and heads of this great city. Night after night I have been awakened by the screams and groans of the patients; and all day listened to the sawing of bones in the amputation of limbs. Besides, I have had such soup to eat ! O Heaven ! And how rapidly these laborers dig in the earth ! That sub-cellar ! No amount of damages could give me reparation."

A week afterwards our lawyer came and said that no less than fifteen hundred dollars had been paid by way of damages without any grumbling.

"Fifteen hundred," observed our sufferer, "will go a great way in summer excursions to Nahant or Saratoga. Be so good, sir, as to hand over the amount. I've earned it, God knows !"

"You see, my dear fellow," said the lawyer, "in settling for the damages, I took the old judgment of twelve hundred and fifty dollars against you as cash, and the two hundred and fifty I keep for my fees, although, really, you should pay me something more besides."

"There is a justice who is considered more liberal than discriminating in regard to allowances to counsel. An advocate was before him for a fee.

"Well, counsellor," asked the judge, "how much do you think you ought to have ?"

The professional gentleman explained the character and extent of his services and suggested that he thought he ought to have an allowance of two hundred dollars.

"Well," responded his honor, "take two hundred ; by the way

this is my birth-day and it makes me feel liberal—you may have three hundred dollars.”

An excited individual came into Martin Wilkins's office exclaiming—

“Mr. Wilkins, you have got me into a horrible fix !”

“How is that ?”

“You advised me *so and so* and the consequences have been *this and that*.”

“What did I charge you for my advice ?”

Answer.—“Nothing.”

“Oh, then,” observed Wilkins, “I can understand it. My advice was equal to your fee.”

As a *pendant* to the above we give the following : William Muloch, of the New York Bar, shrewd, sinister in look and with no modesty of speech, was waited on by a clergyman who desired to have his services in fending off summary proceedings to obtain possession of a house. The lawyer stated to the parson the amount of his fee, which the latter declared to be satisfactory and promised attention to it. Muloch, either from a doubt in the reverend as a paymaster or from forgetfulness of the case, paid no heed ; and judgment was rendered against the client, who immediately came to Muloch, then sitting in the Supreme Court, and in great excitement bitterly complained how, in consequence of Mr. Muloch's failure to appear, he and his wife and family were about to be turned into the street. The counsel thus responded :

“My reverend friend, do you mean to tell me, with all your experience, you have not found that some women and all lawyers are always paid in advance ?”

It has been told how a certain judge, by laying stress on part of a word, made a personal allusion to this gentleman's obliquity of vision. The latter applied for a rule to show cause.

“You may take a rule *nis-i*.”

When the Court of Chancery was in being, vice-chancellors received fees for taxing costs. Hiram P. Hastings, who was somewhat of a contrast to modesty, had a motion before the vice-chancellor of the First Circuit, in which he claimed to be allowed counsel

fees and costs. His honor was against the application and had strenuously to show it, and it was difficult for this naturally amiable and good-tempered gentleman to keep his equanimity here; and while inwardly fretted and quietly reining in his temper, his manner had a seemingly hesitating appearance and as if pondering in connection with a decision.

"I see why your honor hesitates," broke in Hastings, with his accustomed unblushingness. "You were questioning yourself whether you should lose your fee on taxation consequent on refusing my costs or save it by deciding in my favor."

The vice-chancellor, if he hesitated before, did not do so any longer. He peremptorily denied the application, with costs against Hastings.

A claim was made on a marine insurance company in New York for a total loss. The amount was not large; but as the company had a question whether it was but a partial damage, a suggestion was thrown out and approved, as to leaving the matter to three certain persons as referees, and so avoid the expense of all action. But the company got their lawyer to find out what would be the probable expenses of a reference. He having done so, came back and said:

"I saw the referees, and each one says he shall charge five hundred dollars. And if they claim as much as that, I do not feel disposed to attend before them for a less sum than three hundred and fifty dollars."

The president of the company instantly responded: "I think we had better settle at once as for a total loss."

In 1688, at the great trial of the Seven Bishops in England, the highest fees to a barrister were twenty pounds and all the counsel's fees together did not amount to two hundred and fifty. In 1476, the fees seem to have been very small indeed, if we may credit an entry in the churchwarden's book of St. Margarets, Westminster, by which it appears that they paid one Mr. Roger Fylpott, learned in the law, for his counsel, three shillings and eightpence, with fourpence for his dinner. (*1 Johnson's Life of Coke*, 211.)

In a circuit court lately held in New York, a member of the Rhode Island Bar recovered a verdict of twenty-two thousand three hundred and twenty-one dollars and forty-three cents for professional services against Gorham D. Abbott, growing out of one transaction and wherein our brother only acted in consultation and advice—he taking no personal part in a litigation which ended in Mr. Abbott's securing upwards of one hundred thousand dollars. The verdict for this large amount of fees grew out of an agreement to allow 25 — 140 of the sum which should be eventually recovered by Abbott.

Mr. Barent Gardenier, in times gone by a well-known, ready-witted member of the New York Bar, was stopped by a man holding a bank-note for five dollars in his hand, with:

"Mr. Gardenier, pray give me your opinion on this bill: is it a good one?"

Mr. Gardenier eyed it carefully, and then said: "Yes, it is a good bill," at the same time deliberately putting it into his pocket. The interrogator thanked and asked him to return the note; but all he got was—

"I never give an opinion under five dollars."

The smallest fee the writer of this work ever received for valuable advice was fifty cents. We were in our office late of an afternoon, when two strange men came in—one an Englishman, evidently no better for drink; and the other a shrewd and sinister personage, who proved to be the landlord of some low-class boarding-house, where the former had taken up his quarters and no doubt "imbibed."

It appeared that mine host had managed to get his fuddled guest into an understanding to sell a valuable farm in New Jersey for a grossly unjust price, in fact for a mere nominal consideration. The seller, as we gathered, having heard of us, insisted on coming to our office with a view to have some kind of paper drawn. This proposed buyer tried to quiet us into a mere drawing of a contract; and, in coarse language, attempted to check us from making comments; but we spoke in such round set terms and so explained and advised that the half-inebriated Briton caught sufficient of the

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fraud intended and left without entering into any written arrangement. In other words, and referring to the forward state he was in, he backed out of it. Some ten minutes after they had quitted, the befuddled man reopened our door; came corkscrew-fashion towards us, with his finger on the side of his nose, silent but spirituously expressive; laid half a dollar upon our professional desk; gave a smirking wink, with an intensified grateful nod; and still, without a word, made curves towards the door, closed it quietly and departed—leaving us to our own virtuous thoughts and half a dollar.



CHAPTER IX.

SOME REMARKABLE CASES AND TRIALS.

THE FORREST CASE, WITH CHAS. O'CONOR AND JOHN VAN BUREN IN IT.—
 JOSEPH PARKER TRIED FOR BIGAMY.—THE MURDER OF HARVEY
 BURDELL.—THE JEWELS OF THE PRINCE AND PRINCESS OF ORANGE.—
 MONROE EDWARDS.—THE GREEK FRIGATES AND HENRY DWIGHT
 SEDGWICK.—THE CASE OF THE CAROLINE AND JUDGE ESEK COWEN'S
 VIEWS.—JOHN CALDWELL COLT.—HENRY CARNAL.

THE FORREST CASE, WITH CHARLES O'CONOR AND JOHN VAN BUREN IN IT.

EVERY man is working out his epitaph during life. Until the closing stone is rolled to his sepulchre, his complete character appeareth not; and, therefore, it is premature and may be sometimes wrong to say much of one who is alive. Professional persons, however, are necessarily so before the eyes of the community that there appears to be a license to put them, more or less, into print, especially those who achieve greatness.

And no lawyer in the State of New York has done this in a straight, undeviating line better than Mr. Charles O'Connor. Clear, tenacious, truthful, fearless, watchful as though not watching—we will not say unprovoked and unprovocable—but we can knowingly add, charitable, in its highest, best sense: such is Charles O'Connor. •

In language, he works Saxon words into perfect Mosaic; no coarse cement is to be seen. To some, he may be deemed that anomaly, a cold Irishman; but we believe there is in him what is inherent with a naturally gentlemanly nature strained on account of struggles and insulation of early life and requiring confidence and affection from others before there shall be reciprocity. We can best illustrate what we have just said by the two last lines of a verse from Wordsworth's "Poet:"

"He is retired as noontide dew
Or fountain in a shady grove ;
*And you must love him, ere to you
He will seem worthy of your love."*

Quietly and without any rudeness of action or indelicate self-pressure, Mr. O'Connor has passed from the lowest to the highest courts.

Perhaps no professional matter has so popularly marked him approvingly as the Forrest Divorce Case, which lasted two years longer than the siege of Troy.

Many who see a popular actor envy him. We remember our own youthful notions and inexperienced wishes, thinking that to be a performer, with power to bring smiles or tears, to cause the sinking chill of fear or the overboiling heat of patriotism, with attendant applause of listening thousands, was the perfect be-all and the end-all of life. Even the lawyer feels the heart more stirred before a full court than when he has only the judge and silence.

And yet the homage of the outside many adds little to inward happiness. It may be glorious to exclaim towards the elder gods in the Coliseum ; but how is it all this time in the innermost chamber of home where nestle the *Penates* ?

No man ever became so popular throughout the United States in the line of his profession as Mr. Edwin Forrest. Nor was this popularity limited to the foolish many. He had troops of friends among the good and the learned. Indeed, the admiration emphatically shown by Americans to talent was universal for Edwin Forrest ; even faults were twined into embellishments. There never, however, could be a doubt of his broad affection and liberality to friends and perfect confidence in acquaintances.

In England and during the year 1837, Mr. Edwin Forrest married Miss Catharine N. Sinclair, a daughter of a well-known vocalist. They lived happily together until about January, 1849, when, on the husband's making some remark to his wife derogatory to the character of a lady relation of hers, she gave him the lie ; whereupon he said that, as he would not suffer any man to say the same to him and live, he would not live with any woman who

would say so. Soon after this they mutually separated, without any open charge of incontinence the one against the other; and he was to make her an allowance of fifteen hundred dollars a year. Very soon afterwards and on his allegation of being a resident of Philadelphia, he made an application to the Legislature of Pennsylvania for a divorce on the ground of incompatibility of temper and feeling; and for that his wife had committed criminal acts inconsistent with the dignity and purity of the marriage state. All this time he was owner of the country seat in Westchester County, New York, known as Fonthill, and had voted in that county and his wife was residing in New York. He was not successful before the Pennsylvania Legislature. Soon after being here foiled, and while Mrs. Forrest was still residing in New York, he filed a bill for divorce in Pennsylvania, charging adultery with nine persons. The lady then commenced a suit in the Supreme Court of the State of New York and obtained an injunction which restrained him from proceeding against her in Pennsylvania. Mrs. Forrest followed this up by an action in the Superior Court of New York for divorce on the ground of adultery, charging explicit acts in different years; and stating the value of his estate to be two hundred thousand dollars, and that its clear income was not less than six thousand dollars. He, by answer, charged back distinct acts of adultery with six (in the Philadelphia suit it was nine) persons.

The trial in this last-mentioned suit commenced on the 15th of December, 1851, Chief-Justice Oakley presiding. Upwards of eighty witnesses were examined, and it lasted thirty-three days. Mr. O'Connor (*Doric*) appeared for Mrs. Forrest, and Mr. John Van Buren (*Corinthian*) for the husband.

The jury found that the wife had not committed adultery and that Mr. Forrest had done so. The audience applauded.

An appeal was taken by Mr. Forrest to the general term of the Superior Court. It was heard in January, 1856; and the finding of the jury was confirmed on the point of adultery. But as the court considered the jury should not have passed on the matter of alimony, which was one of the issues presented to them and under which they had fixed on three thousand dollars a year, the matter

(as to a proper amount of alimony) went to a reference. It resulted in a report and order on the 4th of May, 1860, allowing Mrs. Forrest for her support four thousand dollars a year from the 19th of November, 1850—thus making a grand aggregate of forty thousand dollars.

Mr. Forrest took an appeal from each and every part of the final judgment and from each and every part of any further judgment and order in the action. It was argued before the Court of Appeals in 1862. Here Mr. James T. Brady (*Composite*) was associated with Mr. Van Buren; Mr. O'Connor being still sole counsel for Mrs. Forrest.

A new point was raised: whether the Superior Court of New York had jurisdiction in actions of divorce. The judgment and order as to alimony were unanimously affirmed. Judge Wright, who gave the leading opinion, paid a compliment to Justice Oakley who, as it will be remembered, presided on the trial in the court below.

By this time Birnham Wood had certainly come to Dunsinane.

So far as popular feeling was concerned—taking the term in its vulgar sense—it was, at first, against Mrs. Forrest; partly, perhaps, from the fact of her foreign birth, mainly through the *prestige* of her actor husband. Her counsel made a bold move in calling, as his first witness on the merits, the defendant himself; and this boldness was increased by a point-blank question, as to whether he, this defendant Edwin Forrest, ever, since his marriage, had had sexual intercourse with a certain actress? Mr. Van Buren took on himself to object to the question, insisting it was improper, because the answer might implicate the witness and he was not bound nor was the counsel entitled to put it. The judge considered the witness could not be compelled to answer. The effect of this objection, which drove off the question, must have been damaging. To have been answered with a perfect negative would have been mightily injurious to Mr. O'Connor's client, for it was connected with her main charge against the defendant; but, as it was, the insistment against response by the defendant's own advocate drifted, on a strong tide, towards the channel of admission.

No one, however, can carefully go through this remarkable and remarkably long trial—lasting thirty-three days—without coming to the conclusion that Mr. Van Buren performed his duties with great zeal, faithfulness and ability. His principal game was recrimination and not defence. There was one unfortunate phrase, which disturbed the still water of the generally serene presiding justice.

Towards the close of the summing up, Mr. Van Buren referred the jury to the fact of how he was to be followed by counsel of acuteness and learning and thereafter “by the court, perhaps by an *unfriendly court*.”

When he had ended, Judge Oakley observed—

“I ought to have remarked, perhaps, on one observation which fell from counsel ; but I am not in the habit of interrupting counsel or of taking any personal notice of what is said by counsel ; but I do not understand the observation of counsel, at his close, about the court being unfriendly. I don’t know precisely what is meant to be implied. It is a very unusual observation for counsel to make, under any circumstances ; and what occasion there could be for making it in the course of this trial, I confess myself entirely unconscious.”

Mr. Van Buren.—“I regret very much to hear the court state that I said any thing to attract attention on the part of the court. I did not anticipate that any argument would be made on it.”

The Judge.—“It was a remark calculated to attract the attention not only of the court, but of all others who heard it.”

Mr. Van Buren.—“I very much regret it.”

Judge Oakley.—“I am not very particular about these things, because they do not affect me personally, nor, indeed, in any sense ; but at the same time, it is travelling out of the legitimate bounds of counsel to say that the court was in the slightest degree unfriendly. Certainly I am conscious of no such feeling, as the gentleman will be satisfied hereafter.”

Mr. Van Buren.—“I hope the court knows me too well, and that I know the court too well—”

Judge Oakley.—“Enough said on the subject, sir.”

Here might have seemed to have been an end of this unfortunate phrase, but we find Mr. O'Connor, in his summing up before the jury, thus powerfully making capital out of it. Addressing particularly the judge :

"Now, sir, I conceive it to be altogether in character ; and following out the probably commendable and certainly very prudent course of my adversary, I deem it proper to impute the remark not to him, but to his instructions ; not as emanating from himself, but as passing through him, the mere conduit, the voice, the language, the observation of his client. Now, sir, I say this is the last impropriety as yet. I have a hope that there will be another ; and I confidently hope, as all the persons who have come within the sweep of this party's moral sabre have received a stroke, even up to your honor, I say I have a confident hope that twelve other individuals will receive a suitable denunciation consequent upon the justice, the integrity, the righteousness of their verdict. And it is only necessary for me to add that, as to other improprieties, I fear them not. Now, sir, I observe on this for the reason I have stated. I observe on it, because it has a tendency to deprive my client of a right before this jury. If your honor please, there have stood, during some five or six long weeks, two advocates, members of the legal profession, who come in each as the champion of his party, each imbued, honestly, as the counsel on the other side says and I am bound to think, honestly imbued with confidence in the righteousness of his client's cause, but each, of course, liable to the deepest prejudices ; liable to be greatly misled ; each liable to use a course of argument unfounded in reason, tintured by affection, colored by passion. How is this jury to decide between us ? How, if I make a statement of evidence directly contradictory to the counsel of the other side—how, if I pursue a course of argument founded on some principle of law to illustrate this case, widely different from the course of argument that I ought to adopt—how, I would ask your honor, are these jurors to find an umpire and arbiter between us, but in your honor ? I have expected through this case, sir, from the very commencement, that every just, honorable and upright man in the community would be deeply imbued, I may say

with violent prejudices, against the case of this defendant up to the time one or two of his own witnesses were examined. I have expected, sir, that calm, enlightened and intelligent judgment which for five-and-twenty years has presided in this court with universal satisfaction, manifested not only under the old system by the highest authority in the State, but more recently by the majesty of the people itself.

“I have, I say, sir, expected that that enlightened judgment which no man ever doubted, which rarely has a jury ever differed with, which we have all at the Bar uniformly known to be so impartial, so just, so enlightened in its view of evidence and in the law, so reasonable, so marked with that plain Saxon common sense which goes straight home to the hearts of men and carries conviction to them—so marked with that love of justice that knows no faltering, so that it has commanded universal admiration : I did expect, sir, though I pretend to no personal claims on your consideration, though my client is a total stranger to you, sir, and a total stranger to all public men, people like yourself—I have expected from the outset that that common justice which for five-and-twenty years all parties litigant in this court have received at your hands, would have been meted out to us in this case ; and that if the evidence made certain impressions on the mind of your honor that, calmly, dispassionately, freely and fearlessly, as heretofore, you would put the case to this jury and whenever the learned counsel on the other side and myself are in conflict, such a conflict as would be regarded material by your honor, that the scale would be made even between us and the right presented to this jury, not, to be sure, for their absolute governance, but for their aid among conflicting arguments.

“I do trust, I do hope, I do pray, nay, I demand, as a matter of justice on the part of one of the most helpless and friendless individuals, so far as the management of a case in a court of justice is concerned, who has ever appeared in this court, that your honor will feel the impropriety of this remark as to unfriendliness and that you will not be turned aside from the performance of that duty from which I never believe you have shrunk ; and that, on

this occasion, disregarding that or any other observation, utterly forgetting it, you will go to this jury with the impressions which the evidence has made on your mind, uninfluenced and unswayed by this gross impropriety."

Accumulation of charge was made against Mrs. Forrest to the extent of using her house, on a particular night, for orgies and general libidinousness. This was confuted by one who was present there, Mrs. Willis ; while there was direct proof of the defendant himself having frequented a house of assignation kept by one Catharine Ingersoll. In laying hold of these, Mr. O'Connor expressed himself thus :

"Could there be any thing more chaste, or refined and delicate, than the manner in which that night was spent, according to the irrefragable testimony of the pure and virtuous lady we have produced ? And while Mrs. Willis was on the stand, I must say that from my very heart I pitied this defendant. It was the only stage of the case I felt pity for him, to think he should have been compelled, after bringing his kitchen witnesses on the stand, to hear the whole matter to which they testified fully described by a lady who partook of that evening's enjoyment. I felt pity for him at the contrast presented between that lady and himself before the jury—he who hated set parties, and who delighted himself in sitting and smoking and holding a certain species of conversation with such men as Messrs. Stevens and Lawson, and spending his days at his orisons in Catharine Ingersoll's. He must have felt debased in his own estimation, and said, "My God, how I must appear before this community ! Am I not like some obscene animal which has escaped from its slough, and looks out from its place of concealment at the refined and delicate society from which he shrinks, lest his presence should contaminate it ?"

In speaking of Mrs. Forrest to the jury, Mr. O'Connor told them they had her destiny in their hands. "A woman, who, at the bright and blooming age of nineteen—and bright and blooming you can have no doubt she was—the pride of her father's house—was captivated by the fame, the personal attractions and his great reputation as an artist which had attached to the distinguished

young American, gave him her hand and trusted her virtue to him. And since then, at all events in the year one thousand eight hundred and forty-nine, eleven long years, nay, about twelve long years, she devoted herself to his service in, I may say, the most abject manner, so much so that that vile woman who was brought from the kitchen to traduce her and to whom an opportunity was furnished, stated she was little better than an upper servant in the house of her lord. I know not how you felt, gentlemen, when that woman uttered that remark ; but I may say for myself, it is the stage of this case—the stage in which I thought of the tendency of the human heart to fiery indignation, which, on fitting occasions, turns, as it were, the milk of human kindness into gall, and makes man feel as if a rattlesnake had prepared to strike.

“I say, gentlemen, these are the parties who stand around you ; this is the sum, in a slight degree, of their condition and claims upon your consideration. I will reserve to a future period what I have to say on the claims of the remaining party to your consideration. You will observe, gentlemen, that Mr. Edwin Forrest comes before you, by the voice of his counsel, to demand of you a verdict which should utterly blast all these people and send him forth annealed, triumphant, clear from every stain and blemish, the victor of all those whom, with iron heel, by means of your verdict and by the course of public judgment, he would trample deep into the slough of never-dying infamy. It certainly is of some importance when we see so many in one scale, while in the other stands a solitary individual, cheerless—as we are told—not a single endearing connection, at least of his own, which should present him to you as a subject of commiseration—a subject of commiseration ! Doubtless he is entitled to justice ; but that justice, I trust, is not to be won by a man’s tears and that too by the tears of a hack-nied actor on the public stage, accustomed to imitate and present the passions which he would excite in others, but never feels himself.”

O’Conor’s determination of purpose was perceivable in this, while he was cross-examining a female witness, the chief-justice asked her how she could explain a certain contradiction ; and he did the same sort of thing a second time,

O'Connor.—“If your honor calls her attention to discrepancies, I will give up the cross-examination.”

Persons dispassionately scrutinizing this Forrest case, must, as we think, come to the conclusion that it is much like another in which the defendant had figured upon the stage. It is Othello, who, without proofs, had some busy and insinuating rogues around him, some cogging, cozening slaves, some honest, honest Iagos, who had devised the slanders until he believed Desdemona was false.

The winning of the Forrest case must have been a full satisfaction to the heart and mind of the advocate for the plaintiff. But, “praise indeed !”—more than could come from Sir Hubert Stanley—was to follow. Estimable women of New York had watched this trial ; and thirty of them, making use of true womanly modesty by veiling their names and appointing Judge Daly as their ambassador, presented to Mr. O'Connor a vase of silver. With the gift, came this letter :

“DEAR SIR—Will you accept the accompanying gift, as expressing, only in a small measure, an admiration and sense of obligation for your noble conduct towards one of our own sex ?

“But for your prompt and generous espousal of Mrs. Forrest's cause and the unflinching energy and endurance with which you conducted it, her triumph over seemingly resistless injustice and calumny probably never would have been gained.

“We have sympathized with her in her wrongs and rejoiced with her in her vindication, yet we ask your acceptance of this expression of our regard, not merely because you were *her* champion, but because we feel that, in vindicating successfully her character against what had almost overwhelmed it, you raised a wall of defence around every home and fireside in this community and that every woman's fair name is safer by the example.

“By this your most chivalrous defence of the weak against the strong, you have won for yourself the admiring respect of the public at large and especially of the sex whose sentiments the givers of this memorial believe they represent.

“With two or three exceptions, we are personally strangers to

your client and yourself, but we offer our sincere wishes for your happiness ; and remain, gratefully and respectfully, your Friends,

“THIRTY LADIES OF NEW YORK.

“February 24, 1852.

“CHARLES O’CONOR, Honored by JUDGE DALY.”

And here is Mr. O’Conor’s response :

“NEW YORK, February 28, 1852.

“HON. CHARLES P. DALY: MY DEAR SIR—To my kind country-women, whose rich gift and far richer words of commendation you have borne me, I ask leave to convey, through you, their chosen herald, the expression of my deep-felt thankfulness.

“They have estimated altogether too highly my humble services upon the occasion alluded to.

“To afford even those whom impartial justice arraigns upon credible evidence a fair hearing, is the first duty of our profession; nor is any duty of any class in social life observed with more untiring diligence and scrupulous fidelity. Consequently, when a friendless woman of reputation till then unblemished and of a carriage which afforded no ground for suspicion made her appeal for a defender against charges not sustained by plausible evidence and prosecuted in a manner which denoted a consciousness of their injustice, you, sir, as a lawyer and a judge, know full well, from your own experience, how cheerfully any of my peers at the Bar would have assumed the office and deemed it, as I did, a boon rather than a burthen.

“An enlightened court and a jury, upon whose fronts the Maker had written that they were true to the best instincts of our nature, made the way from its outset a path of pleasantness. My task was, therefore, easy. By the righteous verdict of that jury, and not by any agency of mine, was American justice vindicated and innocence reassured of its safety against wrong—however powerful and unscrupulous the assailant.

“That result was an ample reward for whatever of labor devolved upon me, yet I most gratefully accept the unhopèd-for addition now so delicately tendered. I am forbidden to recognize the individual donors; and can respond only to the principle which they represent,

"Let me, then, pray for myself and my brethren of the Bar, that we may ever cherish, with unswerving devotion, the pure and elevated sentiments which their approval has consecrated.

"With great respect and esteem, I am, dear sir, yours truly,
"CHARLES O'CONOR."

Honors thickened. Mr. O'Connor's company was requested by our brother, General Charles W. Sandford, at his residence. There, lighted up and increased in its appearance through the glow and electrical influence of a generous banquet, was a Silver Pitcher, guarded by Mr. Daniel Lord, who, in presenting it to Mr. O'Connor, thus addressed him:

"SIR: Your professional friends have witnessed your conduct of the Forrest case with admiration, but without surprise. You defended a deserted wife, sought to be repudiated with disgrace. You proved, by the law and the evidence, to the court and the jury, that she was innocent. You converted your defence into a conquest. You fulfilled, with success, that office of the profession which allies it to chivalry.

"We could not fail to notice the patience, labor and perseverance with which you did your duty; your forbearance under trying circumstances; your steadfastness in battling with unexpected difficulties. We may but allude to your disinterestedness and ability, your learning and eloquence. But we may and do sympathize in the gratification of your success.

"We do not presume to speak for the public; it has long spoken for itself in the confidence it reposes in you. We take no part in the so far terminated controversy—it would not become us. Simply as members of your profession we appreciate this effort so successfully made. We would perpetuate our estimation of it by an enduring memorial of our respect and esteem.

"We know that our gift, now before you, will not be the less acceptable from its being the gift of friends. By strangers it may be thought more honorable to you as recording the verdict of your peers and competitors, the competent judges, the daily witnesses of your professional life.

"Accept this expression of the honor in which we hold you. We feel that, in this expression, we do honor to ourselves."

This memorial bore the arms of the family of the O'Connor Don, with its remarkably telling motto in this particular case: *From God cometh the succoring champion*. It is well understood that Mr. Charles O'Connor is of the blood of those kings or princes of Connaught who were the last Milesian monarchs of Ireland, and of whom the present nearest representative is the O'Connor Don, member of Parliament for the County of Roscommon. Besides the arms (which in heraldic parlance are: *Argent*, an oak-tree *vert*. Crest, an arm in armor embowed, holding a sword *argent* pommelled and hilted *or*, entwined with a snake proper) was the following inscription:

Presented to
CHARLES O'CONNOR, Esq.,

BY HIS ASSOCIATES OF THE NEW YORK BAR,

To evince their appreciation of the Integrity which has distinguished
him as a Man and an Advocate; and of the zeal, disinterested-
ness, learning and eloquence which have rendered
his professional career illustrious.

Daniel Lord,
George J. Cornell,
Robert Emmet,
Augs. Schell,
C. W. Sandford,
J. W. Gerard,
George Wood,
James J. Ring,
W. C. Wetmore,
R. H. Bowne,
Henry A. Cram,
G. M. Speir,
B. W. Bonney,
Henry E. Davies,
William Kent,
Henry S. Dodge,
Wm. Emerson,
George T. Strong,
Horace F. Clark,
George B. Butler,

J. W. C. Leveridge,
Wm. Curtis Noyes,
Edgar Ketcham,
F. B. Cutting,
Philip Burrows,
Wm. M. Pritchard,
Edward Sandford,
Richard B. Kimball,
L. R. Marsh,
Mortimer Porter,
M. S. Bidwell,
C. A. Peabody,
Edwards Pierrepont,
J. Larocque,
S. L. M. Barlow,
Richard S. Emmet,
A. L. Robertson,
Rich. Busteed,
John Slosson,
Wm. C. Barrett,

Charles Appleby,
P. W. Turney,
Charles P. Kirkland,
Wm. Dodge,
R. J. Dillon,
John Addison Thomas,
Wm. Lowerre,
Frederick A. Coe,
Hiram Ketchum,
D. Gould,
J. Humphrey,
Aug. F. Smith,
E. W. Stoughton,
J. E. Burrill, Jr.,
H. G. De Forest,
Wm. M. Evarts,
Edward De Witt,
John McKeon,
Edward Slosson,
John J. Townsend.

Mr. O'Connor's reply:

"MR. LORD AND YOU, GENTLEMEN, MY HONORED ASSOCIATES AT THE BAR: For the high distinction you have conferred upon me, I can only return my simple thanks. Adequately to express the emotions it has excited, is impossible.

"The studies of our profession are directed to the ascertainment of truth; the aim of its more active labors is the enforcement of justice. The voice of approval from a class engaged in such elevating pursuits, carries with it the weight of authority. But I am not so vain as to think that this your generous act is due to your having discovered any peculiar virtue in me or in my actions.

"It is a principle and not this simple instance of conformity to it, that elicits your applause.

"The Bar has ever devoted itself with courage and disinterestedness to the defence of the feeble and the oppressed. It was my good fortune to be selected on an exciting occasion to exemplify the fact and my whole merit consists in this: that I did not fail in a duty which the first rule of our profession rigidly exacts from all its members.

"Your judgment in my favor, permanently recorded in this beautiful gift, is an honor of inestimable value. The consciousness of having received it will brighten every future hour of my life—deep gratitude to you for its bestowal will animate my latest moments."

Mr. O'Connor once acted as counsel for Mr. Edwin Forrest. The latter had made himself liable for the erection of a house, purely out of a friendly feeling for a Mr. Leggett, who was to occupy it. Leggett was called as a witness; his direct testimony was ended, when an adjournment was had and before he could be cross-examined, he died. The referees before whom the action was tried, appear to have laid this direct testimony out of view and the court below considered Mr. Forrest was not entitled to its benefit. His counsel there was some one other than Mr. O'Connor and—as it will thus be seen—did not succeed and a report and judgment adverse to Forrest was sustained. But O'Connor was successful for him in the Court for the Correction of Errors, the

judgment being reversed. (*Forrest v. Kissam*, 7 *Hill's Reports*, 468.)

The character of the late Nicholas Hill, so well known as a reporter and the leader of the Albany Bar, was thus sketched by Mr. O'Connor:

"Twenty-five years only of professional life were accorded to him; but in that space how much he accomplished! First, let us contemplate the long term necessarily occupied by the young lawyer in approving himself as worthy of confidence, by the severe test of actual experience, under the eyes of the bench, the bar and the public; then the progression, steady and gradual, as it must always be if accomplished at all, from an estimation merely local and partial to extended fame—the indispensable basis of high professional success. In some instances these steps seem to be achieved rapidly, each as it were at a single bound; but in our profession an advance of this kind is generally unreal. In Mr. Hill's career, each step was taken deliberately and on firm ground; each advance was marked by substantial fruits.

"When summoned from earth, though he had only attained his fifty-third year, he had confessedly the first place at our bar. A purity of life that knew no blemish; an integrity that no man ever impeached, even in thought; a love of justice that shone out in every word he uttered as an advocate or as an adviser; a calm, clear-sighted, investigating intellect, ripened to fullest maturity and energy by fixed habits of intense application, which never left in any case a relevant fact undiscovered or overlooked a pertinent legal principle;—these were some of the qualities which secured Nicholas Hill the applause of all and the unhesitating confidence of our highest judicial tribunal."

Charles O'Connor, when a young practitioner, had cases in the Marine Court of New York. Actions by sailors for assault and battery were very common. There was a particular mate, who was notoriously brutal to men under him. He had often to hide himself from their vengeance when on shore; and was constantly subject to small actions on account of his violence. Besides this inherent savageness of disposition, his love of combativeness kept

him from compromising cases wherein he was wrong and caused the fellow to enjoy the advancing of fees to litigate to the uttermost, rather than pay even small smart-money. O'Connor was his standing counsel. One time this mate came to him joyously, rubbing his hands from inward delight. "Now I've got something worth your attention, Counsellor. None of your d—d small assaults and batteries; what do you think?" and here he was evidently overflowing with gratification, "By —— (thunder), there's a prosecution against me for murder!"

A few years ago the will of a gentleman in New York was questioned, on the ground of competency in the testator. In the course of the evidence, it appeared that the professional gentleman who had drawn the will and who was of unimpeachable integrity stated that, on arriving at the door of the testator's house he was requested to make haste, went hurriedly up stairs and the will was read over as fast as he could read it, the testator then raised up in bed and his name affixed—gently laid down again—and, in a few minutes, he was dead. The will was complicated and long, with cross remainders, and its true meaning and construction by counsel and courts was afterwards a matter of great doubt and difficulty. It was contended as impossible for this testator to have understood it. In summing up on this point in the evidence, Mr. Charles O'Connor, alluding to the haste of the gentleman who had drawn the will, said, in his own terse language, "He ran a race with Death and he won."

It appeared also by the same witness that one of the heirs had, a very short time before the execution, carried to this gentleman making the will some brief memoranda as the basis for it. Mr. Ogden Hoffman, alluding to this complicated and extended will, observed, "it was like the gourd of Jonah, which grew up in a night and, like that gourd, it had a worm at the root."

A friend who furnished the above two anecdotes remarked, how very illustrative they were of the different minds of Mr. O'Connor and Mr. Hoffman.

"Where are you going to?" asked Charles O'Connor of Robert Dillon.

"I'm going to attend our brother ——'s funeral; won't you go?"

O'Connor and our deceased co-mate had not been on the best of terms.

"Well," responded O'Connor, musingly, weighingly, "no, I think not; but then again perhaps I ought; for, he certainly would have been delighted to attend my funeral."

The validity of bonds issued by the New York Life Insurance and Trust Company came before the Supreme Court of New York. Ex-Judge Bronson was arguing against them. He said, they were worthless and fraudulent from their inception; they carried all this upon their face. "I had some once and lost no time in selling them."

Charles O'Connor, in opposition.—"My opponent did not follow in the steps of his brother judge, the estimable Sir Matthew Hale; with him, counterfeit coin once paid, it was never suffered to be circulated. He thought the imposition practised upon himself afforded no pretence for a repetition of the evil."

By the way, Sir Matthew's mode of action did not terminate as he intended. In time he had accumulated a considerable heap of spurious money, no doubt with a view to destroy it. Some thieves, however, saved him the trouble, by breaking into and stealing it from his chamber; a circumstance which he sometimes amused himself by narrating, and by imagining their feelings when the nature of the prize was ascertained. (*Williams's Life of Hale*, 172.)

We have heard the above matter between Ex-Judge Bronson and Mr. O'Connor narrated in a way different to the above; wherein the latter should state that the good and great judge, Sir Matthew Hale, once found a counterfeit farthing; but instead of throwing it down again, or placing it anywhere so as to allow a chance of being made current, his honor carefully wrapped it up in paper, put it into his pocket; and when he got to his home, he waited until there was a good fire in the grate. Then he dropped the false token into the most intense part, and watched until it was melted. But we have not been able to come across this cir-

circumstance in any life of Hale, and so prefer to give our first version as embracing the incident which did occur between lawyer B—— and lawyer C——.

Mr. Van Buren was little able, in the Forrest case, to utter those pleasantries which deservedly marked him as a fluent man of wit. We observe one light touch of playfulness—although the witness to whom it relates, Ann Flowers, was really his own, with her veracity battered. However, she had been a servant with Mrs. Forrest and so Mr. Van Buren might like to pin her to the plaintiff's sleeve.

He trusted, he said, that when the advocate on the other side came to sum up, he would not forget she was the Flowers of his Forrest.

John Kent, one of the witnesses, said he came from Europe, Tipperary.

It has been thus written of John Van Buren:

“Endowed by nature or education with a coolness and self-possession that are imperturbable, and, at times, perfectly superb, he has a habit of saying his most bitter things without apparent effort and as if unconsciously. With the smoothest voice and the blindest air, he drops sarcasms and invectives that rankle.”

Many remember the war of the Barnburners and the Hunkers. Mr. Van Buren laid himself out with a boldness and eloquence that were powerful. This appeared in speeches at Albany, Herkimer and Hudson. At the latter place, he made a pretty figure of speech which is not in the published report of his address. Speaking of the prevailing tendency of the young men of the day to be “Barnburners” and its effect on the relative position of the two sections, within a few years, he said :

“Wherever I go, I see a new race of men, between twenty-one and thirty, pressing forward into political life in the Republican party. I find that, almost without exception, they espouse, with warmth and vigor, the doctrines and the cause of the radical party. If I were a conservative, as I am not—to see these young shoots springing up all around me would make me feel as *I could fancy a*

dead man would feel if he could see the grass growing over him."

At the anniversary festival of Saint Nicholas in New York, 1847, Mr. John Van Buren was called on for a toast. This was in the time of the City Hotel in Broadway, of which Jennings was the well-known proprietor and who had a very popular stalwart colored waiter, known as Black Sam.

Mr. Van Buren commenced by saying, the gloomy weather had disposed him to grave thoughts. "Heretofore he had attempted to raise their smiles; now, he should ask their tears. He was inclined to be pathetic. Suffering from the blues, his thoughts had naturally run in the direction of the blacks—those faithful standing members of society, who had been too much overlooked. Since he had last met with the society, Death had been among them—black Death. Black Sam was dead. As the able head of the corps of waiters, all must remember him. He had gone to the shades; he had sought a shade darker than his own; and to those who remembered the decided hue of his surface, this last act of his proved him a man of most immoderate desires. He was a creature of shining qualities. It was only since his polished face had disappeared from behind the president's chair that Mr. Jennings had thought it necessary to place there the brilliant mirror which now adorned that part of the room. He was the only man who had ever filled, to its full measure, the society's livery. Clad in the red and white hose which constituted that livery, his noble calves looked more like a pair of prize-oxen or rather, when he remembered their peculiarly fat and lazy look, he should compare them to a couple of striped pigs, but knowing Sam's decided Knickerbocker feelings, he dared not connect his memory with any thing of Eastern origin. But I came," added Mr. Van Buren, "to bury Cæsar, not to praise him; and I will say no more. We ne'er shall look upon his like again. He was unmatched, unmatched; himself alone could be his parallel; and him we never shall behold again; for it is proverbial with what tenacity grim Death sticks to his prey when that prey is a dead nigger." He concluded

by giving, "The Memory of Black Sam," to be drunk standing and in silence.

Mr. Van Buren must have been misinformed of a final departure of Black Sam, or intended a living joke; for, all the time the eulogy was uttering, Sam, erect and with the pride of a Great Mogul, was grinning with amazement and delight from a position near the president's chair, in complete livery, sturdy calves no whit abated, "not a stripe erased nor a spot obscured."

Mr. John Van Buren was taking oysters in a restaurant, when a man, against whom he had lately succeeded in winning a cause, came up to him, disposed to vent his wrath against the successful counsellor; and asked him, if there could be a case so d—d rascally he would not take it up? "I don't know," was the answer, looking with perfect *nonchalance* at his interrogator; "what scrape have you been getting into now?"

We copy from the New York Herald the following which formed part of an obituary notice of Mr. John Van Buren:

"Mr. Van Buren had no high opinion of Governor Seymour, and did not attempt to conceal his dislike of that politician. His enmity commenced in 1844, when his father was beaten in the convention through the opposition of Croswell, Corning and other prominent Democrats, among whom the Van Burens classed Governor Seymour, although that gentleman, according to his custom, made professions of friendship to the candidate to whom he was opposed. Mr. John Van Buren, however, stumped the State for Horatio Seymour in 1862, although in private conversation he did not hesitate to express his real sentiments in regard to him. It will be remembered by many of our readers that the character of Mr. Van Buren's speeches in that campaign were thought to be a little too conciliatory towards the rebel States, and he was bluntly told by some of the Governor's friends that he was injuring his prospects of election by the sentiments he expressed. Mr. Van Buren was not likely to be turned from his course by any such remonstrances; but shortly after he had learned of the dissatisfaction existing in the minds of Governor Seymour's friends, he was set down for a speech at the Academy of Music in Brooklyn on the same evening

with the Governor. The circumstances connected with that meeting were subsequently related by Mr. Van Buren to a friend, and when told in his cool, *nonchalant* style, were very amusing. Of course the anecdote cannot be repeated effectively without the accompaniment of that inimitable style.

“According to Mr. Van Buren’s story, he waited on Governor Seymour, at the St. Nicholas Hotel, early in the afternoon of the day of the meeting, and, after some friendly conversation, told the Governor that he would call for him about half-past six o’clock with a carriage and accompany him to Brooklyn. He instantly observed a hesitation and trepidation in the Governor’s manner, which he at once attributed to an unwillingness to be seen in close communion with the unorthodox stump speaker, and his suspicions were confirmed when the Governor, with some slight confusion apparent in his countenance, told him that he had to make a private call in Brooklyn, and thought of going over as early as four o’clock. Mr. Van Buren, pitying, as he said, the Governor’s dilemma, at once spoke frankly upon the subject of his speeches. He told him that they had been disapproved of by some and assured him that he had always stated to his audiences that he spoke only for John Van Buren, and not for Horatio Seymour or the Democratic party. He begged the Governor, therefore, not to hesitate to refute his arguments or to repudiate all he had said in his speeches, if he felt disposed or deemed that it would be politic to do so. The Governor seized him by the hand and with much warmth assured him that so far from repudiating or refuting any argument he (Mr. Van Buren) had used, he gave all his sentiments his hearty endorsement. They then parted, and Mr. Van Buren, having arranged that the Governor should speak first, took dinner at his club and reached Brooklyn about half-past eight or nine o’clock. The Governor had been speaking for some time and was still speaking when Mr. Van Buren took his seat on the platform. ‘Judge of my surprise,’ said Mr. Van Buren, ‘after what the Governor had told me, to find, before I had been seated for five minutes, that he was repudiating and endeavoring to refute the very positions I had taken in my speeches.’ The Governor closed

his address, and there were loud calls for Mr. Van Buren. According to that gentleman, he felt some hesitation for the first time in addressing an audience, for he could not make up his mind on the instant whether to reply to Governor Seymour's argument and justify his own positions or to take no notice of his speech. So he suggested that before he commenced he should like to hear another air from the band. Before this was concluded he made up his mind that as it was a Seymour meeting and as Governor Seymour was the candidate before the people, he would let his remarks pass unanswered. 'I therefore,' said Mr. Van Buren, in relating the story, 'commenced my speech by congratulating the citizens of Brooklyn upon the magnificence, grandeur and architectural beauty of their splendid Academy of Music. And of course you know,' said he, parenthetically, 'that the Brooklyn people think a little higher of their Academy of Music than they do of the Constitution. I next remarked that if the Brooklyn Academy of Music was always a grand and beautiful building, how much grander and more beautiful must it look on that night, when filled, as it was, with the intelligence, the youth, the loveliness and the grace of their magnificent city.' In this amusing strain Mr. Van Buren continued for some time, illustrating how he had managed to make a decently long speech without saying any thing, and without, as he remarked, 'injuring the chances of my friend the Governor.'"

A brother of the Bar told us, he was at a political gathering in the country when a gentleman of standing was introduced to Mr. John Van Buren.

"I am happy," said the former, "to know you, Mr. Van Buren, on your father's account."

"And I, sir," was the immediate response, "am happy to know you on your own."

His love for and appreciation of children were beautiful and considerate. Once, an invalid, with young people present, he expressed his distress, not at his own suffering, but at their restraints caused by his illness. Mr. James T. Brady mentioned this inci-

dent at a meeting of the Bar called on the death of Mr. Van Buren:

"Brady, nothing pains me so much, nothing informs me so much of the miserable condition I am in than the strange looks these little people give me. I am not unpopular with them, but they shun me and it hurts me."

Mr. Van Buren was trying a cause between the Croton Aqueduct Board and the St. Nicholas Hotel. It appeared that the water did not rise of itself to the upper stories of the hotel, but was carried up by means of forcing-pumps. The Board demanded extra payment for the additional water used by these means; and the only question really at issue was, as to the third floor, whether it was supplied by means of the forcing-pumps or by the natural rise of the water. The evidence on the point being somewhat conflicting, the judge (Roosevelt) jocosely suggested that the counsel on both sides should visit the hotel and ascertain the true state of the case by ocular inspection.

Mr. Van Buren.—"May it please the court, I greatly fear that if my learned brother and myself should visit the St. Nicholas Hotel in company, neither of us would find his way above the ground-floor."

We do not know whether the judge was aware that the bar is situated on this ground-floor.

A certain lady of Albany was said to have imbibed a feeling of dislike towards Mr. Van Buren; and an acquaintance of that gentleman rallied him about it and claimed he should tell the cause. With all the seeming truthfulness of manner possible and in his passive, pleasant, off-hand way he, no doubt, invented the following:

"It dates back to my childhood, when I refused her a ride down hill on my sled."

Mr. Van Buren, having gone to Europe for his health, took passage home for himself, daughter and niece by the steamer Scotia. He was quite an invalid when he got on board; and his illness culminated in his death on the thirteenth of October, 1866, the vessel then having made more than half her passage.

We copy the following from the New York World newspaper:

"It will be a gratification to the friends of Mr. Van Buren to know that for some hours previous to his death he was in entire possession of his mental faculties. The evening on which he died was spent in the society of his daughter and niece, Surgeon Brice, of the Scotia, also being in attendance. He knew that he had been very sick, but happily retained no distinct recollection of having been deliriously affected in his mind, and the bald suspicion he entertained that such had been the case was so affectionately and judiciously discouraged as to disabuse him of the impression and minister to his complete composure and freedom from the mortification which his sensitive nature would have felt. Upon that evening, in contradistinction from previous occasions and as an indication that he was gradually regaining the control of his reason, he so appreciated the propriety of rest and silence as to prefer that his devoted attendants should take the major part of the conversation, and it was at his suggestion that an early retirement was made, in the hope of a good night's rest and a better degree of vigor in the morning. He laid back upon the pillows, quietly but minutely observing the friends by his bedside, and beyond the expression of a heartfelt gratitude for the least service, attempted but little talking. The very last words he uttered are now of mournful yet sacred interest. They exhibit his sanguine nature, his combative temperament and the intensity with which to the last he contemplated the condition and needs of his State and country. About twelve and a half minutes after nine he beckoned Dr. Brice to his side and said, with an earnestness that his vocal hoarseness could not conceal, as his face lighted up with a glow of success anticipated and a smile of hopefulness which death has since emphasized on his features: 'I am going to New York; shall help make my friend Hoffman Governor. Then all will be right, and Johnson and the Union made strong.'

"These were his last words. The subsequent scenes of his death have been related.

"The weather, almost immediately after Mr. Van Buren's death, became tremendously stormy. The Scotia was just sailing into

the gale then raging along our eastern coast. The coincidence of Mr. Van Buren's death with the occurrence of the hurricane had an effect upon the minds of some of the working seamen, which, though not novel, considering their superstitious tendencies, is interesting to relate in reference to the present occasion. The sailors esteemed it very bad luck to keep the body on board, without instantly committing it to the deep, and were chagrined at the noble resolve of Commodore Judkins to bear the remains to our shore for interment. They requested its sea-burial. It was refused. Still the storm continued, and the seamen considered the unconscious corpse a Jonah in their midst, not for the while remembering the almost indestructible staunchness of the Scotia and their really absolute safety ensconced by her strength. It is stated that a movement was frustrated by detection, which they had covertly considered, if not determined, to cut the ropes that held the boat on the port side, in which the confined remains had been placed. The conduct of the officers of the Scotia will be duly appreciated by the thousands to whom the interment of the body of Mr. Van Buren among the scenes and associations of his home is in no small degree a mitigation of the profound personal sorrow occasioned by his untimely loss."

A Democratic organization in Syracuse, Onondaga County, sent Mr. Van Buren their sympathy and a censure on Judge Edmonds for having imprisoned him (see page 123, *ante*); but he responded by telling them they were wrong and the judge was right in committing him.

Mr. Van Buren would sometimes recur to this imprisonment when Judge Edmonds happened to be present. At a social gathering, at which both appeared, Mr. Van Buren told the story of his having been in prison for crime. A lady said, she would like to see the judge who had dared to imprison a son of the President of the United States. It would do her heart good, for she would give him a piece of her mind. Mr. Van Buren then asked: "Madam, would you really like to see him?"

"Yes, nothing would please her better."

"Well," said he, "that judge sits by your side."

"Mr. John Van Buren," writes Mr. Charles P. Kirkland to the author, "was in England at the time of Queen Victoria's marriage; and the fact of his being the son of the then President of the United States and his own gentlemanly bearing gave him the *entrée* to the highest circles. He spent months in the enjoyment of fascinating pursuits and in beautiful places not in the reach of the many. This would have 'turned the heads' of most young men or for a season, at least, have unfitted them for the dry labors of daily life. Van Buren was proof against it all. Immediately on his return, he resumed his work as attorney in the office of his firm, McKown & Van Buren, in Albany. This was at a time when every lawyer was obliged to have an agent at the places where the Supreme Court clerks' offices were established, to attend to the returns of process, receive service of papers and the like. Within a few days after his return, he addressed a letter to his agent at Utica, desiring him to send the return to a writ of *capias ad respondendum*; and adding: 'I beg you to do this as soon as possible, as I wish to satisfy my clients here that I am a man of business and sufficient to attend to their collection suits.'

"The writ, as to which he desired such speedy information, was in a suit by an Albany merchant for a moderate amount of debt against a country customer.

"This anecdote of Mr. John Van Buren has been considered worth relating, as it shows how he possessed, in no ordinary degree, sound practical common sense and the ability to resist the fascinations of social life of the highest grade. His subsequent career demonstrated that he possessed commanding qualities as a lawyer—and the collecting attorney, in a very few years, ripened into the distinguished counsellor and the eminent Attorney-General. Who can say how much of that subsequent distinction may be attributed to the same quality which dictated the letter to his agent?"

JOSEPH PARKER TRIED FOR BIGAMY.

A remarkable trial, showing how circumstantial evidence of identity may be erroneous, occurred at a court of Oyer and Terminer, at New York, in 1804.

Joseph Parker was indicted for bigamy. The indictment, calling him Thomas Hoag, otherwise Joseph Parker, charged that he, late of Haverstraw, in the county of Rockland, laborer, now of the city of New York, cartman, on the 8th of May, 1797, at the said city of New York, was lawfully married to Susan Faesch, and the said Susan then and there had for a wife; and that the said Thomas, *alias*, &c., &c., afterwards, to wit, on the 25th day of December, 1800, at the county of Rockland, his said wife being then in full life, feloniously did marry and to wife did take one Catharine Secor, &c. To this the prisoner pleaded *not guilty*.

The first marriage was admitted by the counsel for the prisoner; and also that the wife was still alive.

On the part of the prosecution, Benjamin Coe testified that he was one of the judges of the Common Pleas for Rockland County; that he well knew the prisoner; that he came to Rockland in the beginning of September, 1800, and there passed by the name of Thomas Hoag; that there was a person with him who passed for his brother, but there was no resemblance between them; that the prisoner worked for witness about a month, during which time he ate daily at witness's table, and he of course saw him daily; that on the 25th of December, 1800, witness married prisoner to one Catharine Secor. Witness is confident of the time, because he recollected on that day one of his children was christened; that during all the time prisoner remained in Rockland County, witness saw him continually. He was, therefore, as much satisfied the prisoner was Thomas Hoag as that he himself was Benjamin Coe.

John Knapp testified that he knew the prisoner in 1800 and 1801, in Rockland County and he passed as Thomas Hoag; that he saw him constantly. He was at prisoner's wedding; that Hoag had a scar under his foot. The way witness knew it was, he and Hoag were leaping, and witness outleaped Hoag. Upon which Hoag remarked he could not leap as well as he formerly did before he received a wound in his foot by treading on a drawing-knife; that Hoag then pulled off his shoe, and showed witness the scar under his foot, and the scar was very perceptible. Witness was very confident the prisoner was Thomas Hoag.

Catharine Conklin testified that her maiden name was Catharine Secor; she was at the time of her giving her evidence married to one Conklin; she became acquainted with the prisoner in the beginning of September, 1800, when he came to Rockland; he then passed by the name of Thomas Hoag; witness saw him constantly. Shortly after their acquaintance he paid his addresses to her and on the 25th of December married her. He lived with her till the latter end of March, 1801, when he left her; she did not see him again until two years after. On the morning of his leaving her, he appeared desirous of communicating something of importance, but was dissuaded from it by a person who was with him, and who passed for his brother. Hoag, until his departure, was a kind, attentive and affectionate husband. She was as well convinced as she could possibly be of any thing in this world that the prisoner at the bar was the person who married her by the name of Thomas Hoag. She thought him and still thinks him the handsomest man she ever saw.

"How often," said she, addressing the prisoner, and looking at his hair, "have I combed those dear locks!"

Witnesses on the part of the defence,—Joseph Chadwick testified that he had been acquainted with the prisoner, Joseph Parker, a number of years. Witness resides in this city (New York), and is a rigger by trade; prisoner worked in the employ of the witness a considerable time as a rigger. He began to work for him in September, 1799, and continued to do so till the spring of 1801; during that period he saw him constantly; that it appeared from witness's books Parker received money from witness for work, which he had performed on the following days, viz., on the 6th of October and 6th and 13th of December, 1800; on the 9th, 16th, and 28th February, and 11th of March, 1801; that Parker lived from May, 1800, till some time in April, 1801, in a house in New York, belonging to Captain Pelor; and during that period and since, witness has been well acquainted with prisoner.

Isaac Ryckman testified.—That he was an inhabitant of New York; he was well acquainted with Joseph Parker, the prisoner, and had known him a number of years. Witness and Parker were

jointly engaged in the latter end of 1800 in loading a vessel for Captain Treadwell of New York; they began to work on the 20th December, 1800, and were employed the greatest part of the month of January, 1801, in such loading. During this time, witness and Parker worked together daily. He well recollected they worked together on the 25th day of December, 1800. He remembered it, because he never worked on a Christmas Day before or since; and knew it was in 1800, because he (Parker) lived that year in a house belonging to Captain Pelor and he remembered their borrowing a screw for the purpose of packing cotton in the hold of the vessel whereon they were at work, from a Mrs. Mitchell, who lived next door to Parker. Witness was one of the city watch, as was Parker; and witness had served with him from that time to the present day upon such watch and never recollected missing him any time.

Aspinwall Cornwall gave evidence.—That he lived at that time in Rutgers street, New York, and had lived there a number of years; that he kept a grocery; he knew Parker, the prisoner, in 1800 and 1801; Parker then lived in Capt. Pelor's house; he lived only one year in Pelor's house. Parker while he lived there traded with witness; witness recollected once missing Parker for a week, and, inquiring, found he had been at Staten Island working on board of a United States frigate; and excepting that time, he never knew him to be absent from his family and saw him constantly.

Elizabeth Mitchell.—She said she well knew Parker, the prisoner; that in the years 1800 and 1801 he lived in a house adjoining to one in which she resided. The house Parker lived in belonged to Captain Pelor. She was on habits of intimacy with Parker's family, and visited them constantly. Parker being one of the city watch, she used to hear him rap with his stick at the door to awaken his family, upon his return from watch in the morning. She also remembered perfectly well Parker's borrowing a screw from her on Christmas Day in 1800; she offered him some spirits to drink, but he preferred a glass of wine, which she got for him; the circumstance of her lending the screw to him she was the more positive of from recollecting it was broken by Parker in using

it. Parker never lived more than one year in Pelor's house; and from that time to the present, witness had been on the same terms of intimacy with Parker's family. She, therefore, considered it almost impossible he could have been absent from town any time without her knowing it and she never knew him to be absent more than one week while he lived in Pelor's house.

James Redding.—He testified that he had lived in New York a number of years. He had known Parker, the prisoner, from his infancy. Parker was born at Rye, in Westchester County. In 1800 he lived in Captain Pelor's house and witness saw him then continually and never knew him, during that time, to be absent from town any length of time. This witness particularly remembered that while Parker lived in Pelor's house, witness some time in the beginning of the month of January, 1801, assisted Parker in killing a hog.

Lewis Osborn testified.—That he had been acquainted with Parker, the prisoner, for the last four years. Witness had been one of the city watch; and from June, 1800, to May, 1801, Parker had served on the watch with him. At first Parker served as a substitute; that is, one who, in the case of the absence of a regular watchman, supplies his place. Witness remembered that Parker, a few days after Christmas, 1800, was placed upon the roll of the regular watch in the place of one Ransom, who was taken ill; witness was certain it was at this period, because that was the only time witness ever served upon the watch. During the above period witness and Parker were stationed together, while on the watch, at the same post. He was certain that Parker, the prisoner, was the person with whom he had served on the watch and confident that, during this time, Parker was never absent more than a week at any one time.

The defendant's counsel here rested.

Evidence on the part of the prosecution continued:

Moses Anderson testified.—That he had lived at Haverstraw, Rockland County; had lived there since 1791. He well knew the prisoner. He came to the house of the witness in the beginning of September, 1800, and passed by the name of Thomas Hoag. He

worked for witness eight or ten days. From that time until the 25th of December, prisoner passed almost every Sunday at witness's house. During the prisoner's stay in Rockland County, witness saw him constantly. If the prisoner was the person alluded to, he had a scar on his forehead, which he told witness was occasioned by the kick of a horse. He had, also, a small mark on his neck (those marks the prisoner had). He had also a scar under his foot, between his heel and the ball of his foot, occasioned, as he told witness, by treading upon a drawing-knife, and this scar was easy to be seen. His speech was remarkable, his voice being effeminate and he spoke quick and lisped a little (those peculiarities were observable in the prisoner's speech). The prisoner supped at witness's house the night of his marriage, in December, 1800. He had not seen the prisoner until this day, since the latter left Rockland, which was between three and four years ago. He was perfectly satisfied in his own mind that the prisoner was Thomas Hoag.

Lavinia Anderson testified she knew the prisoner. His name was Thomas Hoag. In September, 1800, he came to the witness's house in Rockland County and worked for her husband for eight or ten days, and then worked for Judge Suffrein. Every Saturday night until the prisoner was married, he and a person who passed for his brother came to the witness's house and staid until Monday morning. Witness washed for him; there was no mark upon his linen. The prisoner, if he is Thomas Hoag, has a scar upon his forehead; he has also one under his foot. She was certain of the mark under his foot, because she recollected the person who passed as his brother having cut himself severely with a scythe and complaining very much of the pain, and Thomas Hoag told him he had been much worse wounded and then showed the scar under his foot. She also said, that about a year ago, after a suit had been brought in the Justice's Court, New York, wherein the identity of the prisoner's person came in question, witness was in town and having heard a great deal said on the subject, she was determined to see him and judge for herself and accordingly she went to his house, but he was not at home; she then went to the

place where she was informed he stood with his cart and she there saw him lying upon his cart with his head on his hand and in that situation she instantly knew him. She spoke to him and when he answered her she immediately recognized his voice, which was very singular, shrill, thick and something of a lisp. Hoag had a habit of shrugging up his shoulders when he spoke and this she observed in the prisoner. The prisoner said he had been told she was coming to see him and it was surprising people could be so deceived and asked witness if she thought he was the man. Witness replied she thought he was, but would be more certain if she looked at his forehead and she, accordingly, lifted up his hat and saw the scar there which she had often before seen and the prisoner then told her it was occasioned by the kick of a horse. It was impossible she could be mistaken; prisoner was Thomas Hoag.

Margaret Secor gave evidence that about four years ago she lived at Rockland with her father. Moses Anderson and the prisoner, Thomas Hoag, came to their house in September, 1800. He remained in Rockland five or six months. Hoag used to come every Saturday night to her father's house to pass Sunday and she, the witness, used to come and tie his hair every Sunday and, thus, saw the scar. Witness married about two years ago and came immediately to live in New York. After she had been in town a fortnight, she was one day standing at her door and heard a cartman speaking to his horse and she immediately recognized the voice to be that of Thomas Hoag and on looking saw the prisoner and instantly knew him. As he passed her she smiled and said, "How d'ye do, cousin." The next day he came to her house and asked how she knew he was the man. Witness replied, she could tell better if he would let her look at his head and accordingly she looked and saw a scar upon his forehead, which she had often remarked upon the head of Hoag. This witness admitted she had mentioned her suspicions to her husband and that her husband had told prisoner of it and had brought him to the house. She was confident the prisoner was the person who passed at Rockland as Thomas Hoag.

James Secor testified he had been married about two years and

a half and had brought his wife to town about a week after marriage. He knew Hoag at Rockland and had repeatedly seen him there. When he saw the prisoner at his house in town, he thought him to be the same person. Witness's wife had mentioned to him that Hoag had a remarkable scar on his forehead and when he was at witness's house he saw the scar.

Nicholas W. Conklin said, he lived in Rockland County and knew the prisoner; his name was Thomas Hoag. He could not be mistaken. Hoag had worked a considerable time for him and during such time he had eaten at witness's table. Hoag being a stranger and witness understanding he was paying his addresses to Catharine Secor, witness took a good deal of notice of him. He lived in a house belonging to witness. When witness saw the prisoner at New York, he knew him instantly; his gait, his smile (which was a very peculiar one), his very look, was that of Thomas Hoag. Witness endeavored, but in vain, to find some difference between prisoner and Hoag, but he is satisfied in his mind that he is the same person. Hoag, he thought, was about twenty-eight or thirty years of age. Thought Hoag had a small scar on his neck.

Michael Burke gave evidence that he formerly resided in Haverstraw and saw the prisoner several times there, before and after his marriage, in December, 1800. He was as well satisfied as he could be of any thing that the prisoner was the same person he knew at Haverstraw. About two years ago, he met the prisoner in the Bowery, New York. It was at the time of the Harlem races and prisoner spoke to the witness, saying—

“Am I not a relation of yours?”

Witness replied—

“I don't know.”

Prisoner then said—

“I am—I married Katy Secor.”

Cross-examined.—Witness admitted he and the prisoner had a quarrel respecting the witness calling him Thomas Hoag and that the above conversation was after the trial in the Justice's Court. Witness, when asked if he was at the trial, said he was not,

although, when interrogated particularly, whether he was not in the court-room at the time, admitted he was.

Abraham Wendell testified.—He knew one Thomas Hoag in the latter end of 1800. He was then at Haverstraw, and he had been very intimate with and knew him as well as he knew any man. He had worked with him; had breakfasted, dined and supped with him; and many a time had been at frolics with him, and the prisoner at the bar was the same man. He had no doubt of it. About a year ago, witness being in the City of New York, was told that Hoag had beaten the Haverstraw folks in an action wherein his identity had come in question, and witness told them he could know him with certainty; they said they would send him down that day; witness was aboard his sloop and saw prisoner at the distance of an hundred yards coming down the street and instantly knew him. The prisoner came up and said:

“Mr. Wendell, I am told you say you will know me.”

Witness replied:

“So I do, you are Thomas Hoag.”

Witness was as confident the prisoner is the person as he was of his own existence.

Sarah Conklin said she lived in Haverstraw. In September, 1800, a person calling himself Thomas Hoag was at her house and was very intimate there; he used to call her aunt; is sure the prisoner is the same person; never could believe two persons could look so much alike; Hoag and the prisoner talk, laugh and look alike; she would know Hoag from among a hundred people by his voice; the prisoner must be Thomas Hoag; had not seen him since he left Haverstraw till to-day.

Gabriel Conklin testified that he lived in Haverstraw. He knew Thomas Hoag. He was in the witness's house in September, 1800, and often afterwards. The prisoner is the same person unless there can be two persons so much alike as not to be distinguished from each other. The prisoner must be Thomas Hoag. Thomas Hoag had a scar on his forehead and a small scar just above his lip (prisoner, as we have before said, had these marks).

Further testimony on behalf of the prisoner:

James Jasper testified.—He had known Joseph Parker, the prisoner, for seven years past. He had been intimate with him all the time and they had worked together as riggers until Parker became a cartman. He knew Parker when he lived in Captain Pelor's house, and never knew him absent from the city during that time for a day, except when he was working on board of one of the United States frigates about a week at Staten Island. In the year 1799 the prisoner hurt himself on board the Adams frigate, and he then went to his father's in Westchester County, and was absent nearly a month. He was very ill when he left town, and witness went with and brought him back again. He was not then quite recovered; recollects perfectly Parker and some other company passing Christmas-eve at witness's the year that Parker lived in Captain Pelor's house, which was in 1800.

Susannah Wannel testified.—That she had known the prisoner for six years; and he married witness's daughter. Knew him when he lived in Captain Pelor's house. Parker's wife was then ill, and witness had occasion frequently to visit her. Saw prisoner there almost daily; and, excepting the time he was ill and went to his father's in Westchester, he has never been absent from the city more than one week since his marriage with witness's daughter.

It was agreed that the prisoner should exhibit his foot to the jury, in order that they might see whether there was the scar which had been spoken of in such positive terms by several of the witnesses. On exhibiting his feet, not the least mark or scar could be seen upon either.

In further confirmation of the prisoner's innocence, Magnus Beekman testified that he was captain of the city watch of the second district in New York, and was well acquainted with the prisoner, Joseph Parker. He, Parker, had been for many years a watchman and had done duty constantly as such. The witness, on recurring to his books where he kept a register of the watchmen and of their times of service, found that the prisoner, Joseph Parker, was regularly on duty as watchman during the months of October, November and December, 1800, and of January and

February, 1801; and particularly that he was so on the 26th of December, 1800.

The jury, without retiring from the bar, found a verdict of *not guilty*.

A few years ago this man was still living in New York as a cartman. The author called on and ascertained that the above statement of his trial was correct. The alleged wife, Mrs. Conklin, was also residing in the city and still so infatuated as to upbraid Parker, whenever she met him; and would point his attention to her daughter, as if the latter were their joint offspring.

THE MURDER OF HARVEY BURDELL.

Harvey Burdell was a dentist in New York, of confirmed bachelor habits, neither loveable nor loved, intermeddling and always looming for much more than he was worth in money, manners or charitableness.

He had purchased the dwelling-house No. 31 Bond Street, New York; and after reserving certain portions for his sleeping and dental purposes, he let the rest of it to a widow named Emma Augusta Cunningham.

Cities produce strange beings. Now and then you come across a creature with fine animal eyes, added to an ostentatious development of female form—and yet, you cannot call it woman. Neither love, affection nor respect goes with or follows it, while repulsion instantly wakes up. Something tells you, this being was not made to help or cheer or cling to man and cannot have pride in offspring. It often takes to widow's weeds and, like the selfish cuckoo, generally insinuates itself into the nests of others.

The sequel will show how far Emma Augusta Cunningham was this nondescript. An incident in her early life, which we had from a reliable source, will go far to show how devoid she even then was of feminine qualities.

She and her two sisters were living with their father not far from New York. There was a fence which divided his dwelling from the premises of a gentleman who had a magnificent and

favorite Newfoundland dog. This gentleman unknowingly, for no just cause, got the ill-will of her family. One day the dog was missing; and its owner, hearing a strange, scuffling noise, managed to peep over the fence, and there was Emma Augusta, then but a growing girl, cutting the throat of this noble dog.

As one of the other sisters, Mrs. Barnes, will have to figure here, we give a circumstance in her prior history.

Mrs. Barnes had been twice married; her first husband dying suddenly, leaving four children to her care. Her second husband, Barnes, resided with her at Newark, New Jersey, and also died suddenly, leaving her three children. In the summer of 1850 the widow Barnes occupied a small house on old Gowanus Lane, now a part of the Fifth Avenue, Brooklyn. She was a member of and a Sunday school teacher in the Dean Street Methodist Church, of which the Rev. S. H. Clark was pastor. Being poor, she was assisted in the support of her family by the church. In the summer of that year, one of the members of the church, a Mr. W——, who then resided in Oxford Street, Brooklyn, doing business in New York, prepared to go into the country with his family. Wishing some one to take charge of his house during his absence and thinking to do a kindness to a sister in the church, he applied to Mrs. Barnes, who gladly accepted the offer to make his house her home until the family returned. They were absent about three weeks; and, when they returned, found that the house had been robbed of almost all the valuable portable articles in it. Wine, silver, china and glass ware, table-cloths, napkins, sheets, pillow-cases, counterpanes, even the beds themselves had some of them been ripped open and a portion of the feathers taken out and carried away. Mrs. Barnes was in the house when they arrived and welcomed Mrs. W—— as if nothing unusual had happened. She soon left for her home, and it was not till after her departure that the robbery was discovered—although, immediately after it, loose feathers from the beds had been traced all along the road from Mr. W——'s house to this woman's dwelling. When the fact was announced to Mrs. Barnes, she showed the greatest astonishment and protested that it must have been done by the servant-girl.

Complaint was made before a police justice, and an officer named Eagan, accompanied by Mr. W—— and the pastor of the Dean Street Church, proceeded to search the residence of Mrs. Barnes. They were, at first, refused admittance, but finally succeeded in entering the house—Mrs. Barnes having, in the mean time, escaped by the back door. Many of the missing articles were there found and identified; while the remainder, they were told, were taken to a place designated in New York. Mrs. Barnes was arrested by officer Eagan, and put in the lock-up. She was expelled from the Dean Street Church; but as Mr. W—— took no further steps in prosecution of the matter, the woman went free.

The other sister married a Captain W——, and she too, it is said, set Mrs. Cunningham an example, by attempting to palm off a child got from an improper house as her own and the offspring of her husband, with a view the better to secure his properties.

Mrs. Cunningham had two grown daughters. She had male boarders, two women servants, and one *man servant*, *John*, with her in No. 31 Bond Street. We have italicized “man servant, John,” because the question occurred to us immediately after the fearful circumstance we are about to mention, what had become of him? And, as it will be seen hereafter, the question recurred; and we have always wondered why he was never sought after, knowing he was under the control and the menial of Mrs. Cunningham.

The New York morning newspapers of the thirty-first of January, 1857, waked up the city with the intelligence that Harvey Burdell had been found murdered in one of his rooms at No. 31 Bond Street.

Excitement was great throughout the city; and it was kept in a narrowed direction mainly through the unadvised, impetuous and injudicious start and course pursued by a coroner. He worked an inquest in his own peculiar way; the idea of guilt, like a fixed Dutch weathercock, pointed in a single direction only; and coroner's jury and outside public seemed to have no thought beyond the inmates then found in 31 Bond Street.

The gross incompetency, even using the lightest terms, of the

coroner who acted in this solemn case, is sufficiently exemplified in the following extracts from the testimony taken on the inquest :

Testimony of John T. Hildreth.—“Cunningham was a distiller : a manufacturer of liquid death, as I term it.”

Coroner.—“I will put that down for the benefit of the temperance society.”

Testimony of Daniel Ullman.—Witness commences reading over the notes, to which he made a slight objection.

Coroner.—“It does not matter, sir (emphatically). If you are hanged, I will be the executioner.” (Laughter.)

Witness.—“Do you wish any thing else, Mr. Coroner?”

Coroner.—“Not at present.”

Witness.—“If you do, you know where to find me.”

Coroner.—“I know it, sir; you have done the State some service, sir.” (Laughter.)

Testimony of Mrs. Susan Main.—A question arose as to how the lady spelt her surname.

Coroner said he had got it down as “Maine;” and addressing the witness, remarked—“This is a main chance for making a conquest, anyhow.” (Laughter.)

Testimony of Cyrenus Stevens.—“The moment after we came into the room, Dr. Burdell came into the room and related all that had passed to him. Mrs. Cunningham was not in the room.”

Coroner.—“Probably she was peeping through the glass to see the elephant.”

Testimony of Mary Donohue.—Q. “Was Mr. Eckel in the habit of being in her bedroom every night?”

A. “For the last month or so he was. He carried up birds and he was always there.”

Coroner.—“Yes, he was a bird himself. That is right.” (Subdued laughter.)

Q. “Did you ever hear any conversation between Mr. Eckel and Mrs. Cunningham?”

A. “Well, I did not hear any particular conversation.”

Coroner.—“You remember now, Mary, that you have taken this

oath and that you respect an oath and all that sort of thing. I know you don't mean to endanger your soul for anybody."

Witness.—"No, sir."

Q. "Did you ever see him kiss her?"

A. "No, sir, I never did; but I saw him pay her a great deal of attention."

Q. "Winking at her?"

A. "Well, I thought them very intimate and did not feel easy in the place and have thought that, on account of her being the mother of a grown-up family, it was hardly right."

Coroner.—"That's just it. I know, from where you come from, that it's all right, Mary."

Q. "Did you ever know Mr. Burdell to use the same familiarity with Mrs. Cunningham that this Eckel used?"

A. "Never, sir; he was quite different in his manner; he was always respectful and obliging to her. If she wanted any thing, he would send for it for her."

Coroner.—"Ha! ha! ha! that's my opinion."

Q. "Did you hear any threat yourself or were you ever told of any by any of the domestics in the house, as having been used by Mrs. Cunningham towards Mr. Burdell?"

A. "I never heard her directly say so, but she said it was time that he was out of the world, for he was not fit to live in it or something like that. Her elder daughter, Augusta, said the same; she said he was a bad man."

Coroner.—"I knew, Mary, I knew that you carried your tail behind you, by gracious." (Laughter.)

Witness.—"The Monday after that, however, he could not get in on Sunday night, and—"

Coroner.—"Stop a moment, stop a moment! Now you are coming out brilliantly. Now, Mary, like a good girl as you are, doing the State some service, can you tell me whether Mr. Eckel made any reply to that conversation?"

A. "Yes, sir; will you allow me to tell you one thing?"

Coroner.—"Yes I will, Mary, and be very happy to hear you."

Witness.—"The Sunday night after, they had loud words."

Coroner.—“Tell it easy, Mary, they (referring to the reporters) want to get it out. Those men are not going to annoy you. Some of them are old, stale bachelors and their hearing is bad. If you asked one of them to kiss you, he wouldn't hear it. (Laughter.) Go on now and tell it out.”

After this murder and not before and while Mrs. Cunningham was in the Tombs prison, under the finding of the coroner's jury, she claimed to have been married to Harvey Burdell; and, as his alleged widow, applied to the Surrogate of the County of New York for letters of administration on his personal property.

At this stage, the author of the present work was appointed guardian *ad litem* for some of the infants next of kin and heirs of Harvey Burdell, children of a brother and sister; and, in the direction of this woman Cunningham's application for letters of administration, he took a leading and active part.

In the early part of the proceedings before the Surrogate, the author was crossing the park towards the Surrogate's Court, when he was stopped by one he knew to have been around the Cunningham family (his name has never transpired in the Burdell proceedings) and this person, impressing secrecy, and, at the same time, fear of Mrs. Cunningham, hinted that *the servant man, John*, who must have left New York immediately after the murder, knew something about, even if he had not a hand in the murder. This waked up our first surprise as to the authorities not having inquired after and traced this person. We, ourselves, up to this time, were only interested in civil proceedings; both Coroner, District-Attorney, police authorities and even citizens generally had settled into a seeming conviction; one person was in prison as the sole criminal; and there were other persons and things around the affair (unnecessary here to go into) which made us reluctant to do any more than our duty before the Surrogate.

Before, however, the proceedings on the claim for administration were through, the trial of Mrs. Cunningham for murder came on. A few days before it took place, the District-Attorney asked the present author to assist in it—to which he agreed—considering it a duty. But he afterwards regretted, for he was not impressed

with the theory of that gentleman; he plainly saw there was a want of legal evidence; felt convinced, from the first, that one person only did not do the deed, while all that was to come out and be worked up on the trial had reference to a single accused; and, besides, he found he, himself, would be but a cypher, because the Attorney-General was associated with Mr. Hall, the District-Attorney, so that a third counsel, holding no official position, would not be allowed to take a leading part in examining witnesses or to address the jury.

He did, notwithstanding, the better to understand the case, go to the scene of the murder; and, from the position of door and marks of blood, which had spirted high upon the wall—coupled with his own idea of Burdell's position and movements—he was impressed with the belief that some one party active in the matter was, as it is termed, left-handed. He was able to ascertain, from the matron of the jail, that the woman then under charge used her left hand; and, in this way, the fact of her being left-handed came out on the trial.

The District-Attorney was not in possession of any powerful, direct testimony; and the trial resulted in an acquittal.

Let us now recur to the evidence and circumstances brought out in the Surrogate's Court on Mrs. Cunningham's application for letters of administration.

On the evening of the twenty-eighth of October, 1856, Uriah Marvin, a clergyman, united two persons in the bonds of wedlock at his residence, No. 732 Greenwich Street, New York. One of the parties was this Emma Augusta Cunningham, the attendant witness was her daughter, Margaret Augusta Cunningham; but whether the other party was Harvey Burdell, was the question on which administration hinged.

The principal witnesses to sustain that the bridegroom was Harvey Burdell, were the before-mentioned daughter and this clergyman.

The latter had viewed the body. He testified that the man he married first called on the morning of the twenty-eighth of October and requested him to officiate at a marriage ceremony. He took a memorandum of the names and other particulars for

his register, which were ascertained by interrogation. The party requested him not to publish the marriage; and an appointment was made for eight o'clock the same evening. At the designated time, the man called with two ladies; and the marriage was performed. The man was "awkward," as if not knowing "how to act;" and paid him a fee of ten dollars; something was said about his calling for a certificate the next day; "he wanted a certificate"—and there the matter terminated. The certificate was made out and delivered in the morning. The man "sat down in a chair and read it to himself;" "appeared to read it with deliberation;" and "when he got through reading it, he nodded his head and said 'all right,' or something to that effect." Now, the name in this certificate was Berdell. "He made no observations about the spelling of the name of Berdell; did not ask me to make any correction. I don't know of any more conversation—that was the substance of it; he then left."

In this certificate, the place of nativity of the man was "New York;" whereas it was proved that Harvey Burdell was born at Herkimer. It was also in evidence that the deceased was quite ready to observe whenever there was such a misspelling of his name as Berdell. And as the Surrogate remarked, this certificate was wanted as evidence. The clergyman also testified, as to the bridegroom, he thought he saw "daylight between his whiskers and his face." "I thought they were false whiskers and had sprung out a little." "I remained so impressed up to the second interview." A respectable witness proved that Mr. Marvin said to him, "he was not good at recognizing persons," "that death changed the countenance so much and he not being ready to recognize a person by sight, he did not know if he could have recognized a corpse, even if it had been the man he married." And the Surrogate remarked that a first difficulty was that the minister was called to judge of the identity of a living being with a dead body. Mr. Marvin, however, came to this conclusion :

"Since the murder, I have been very much interested in the matter and have thought a great deal of it. I have recalled the features and general appearance of the deceased and compared

them with the features and general appearance of the man I married; and the more I have done so, the more I am convinced that the man I married was Harvey Burdell."

On being asked if he had any doubt whatever on the subject, he replied—

"None whatever."

The daughter, Margaret Augusta Cunningham, testified.—"The doctor" (Burdell) "first requested me to witness the marriage ceremony on Sunday morning next preceding the marriage. The doctor first spoke to me about it. He asked me if I would be willing to be a witness to a marriage between mother and himself. He also stated he wanted me to keep it a secret until June next; that he then intended going to Europe with mother. He, also, stated that he would take me with them, if I wished to go. My mother was then present. He asked her if I could keep a secret; and she said, he must ask that question of myself. He also stated to me that mother was going to Goshen to see if she could get Dr. Snodgrass to come in town to marry them. I asked the doctor if it was to be at the house. He said it was to be there and take place at the house.

"The next morning the doctor told me, mother had gone to Goshen for Dr. Snodgrass. I don't think he spoke about it again until Tuesday morning, before breakfast, between seven and eight. He then asked my mother what her age was; she told him; she said thirty-five. He had a paper at that time with him with Mr. Marvin's address, which Mrs. Snodgrass had given mother at Goshen. He stated that he was going to the bank and he would see Mr. Marvin before he returned. I did not see him then until six o'clock in the evening; he was in the hall, he merely made the remark, saying, 'I have accomplished it.' The witness then described the preparations and the departure from the house to the person's, stating, that as they were passing out, they met sister Helen 'in the hall, the front hall,' and her mother told her 'to remember this night,' but gave 'no reason.' She continued the account by stating that after leaving the house, her mother said she 'had left her gloves' and the two stopped half an hour, while

the doctor went to buy the gloves; he bought them and the party then proceeded to the clergyman's where the ceremony was performed. On the way home, she made the remark to Burdell, 'what would he say' should she disclose the marriage? and he answered 'he would kill her.' Her mother inquired of him, why he had not given Mr. Marvin the ring? He replied, 'he did not ask for it; he would put it on her finger and say a few words and it would do just as well—he then put a ring on her finger in the street.' ”

This witness had given evidence on the coroner's inquest; and there were marked discrepancies between it and her testimony before the Surrogate.

There was a mass of testimony leading reasonably to the idea that Harvey Burdell was many miles away from New York at the very time the alleged preparations for marriage were in progress. And for some time prior to this alleged marriage, he and Mrs. Cunningham were in frequent altercation—she determining to remain in 31 Bond Street and he declaring she should not. At the beginning of December (after this alleged marriage in October) there was a quarrel and he, seizing a gun, drove her out of the room; while she was heard to say “that Dr. Burdell would learn to behave himself before she vacated his house.” In the summer of the same year, he had charged her with stealing notes from his iron chest. She sued him in slander—she was heard to say, “she would have his heart's blood.” She commenced a suit against him for breach of promise of marriage as late as September, the month immediately before the suggested marriage; while the slander suit was in that very month, October, commenced on the tenth;—alleged marriage eighteen days after. All matters of suit were settled—discharges dated October the twenty-second. It was proved that Burdell declared the suits were brought “to extort money. He was going to take her up for stealing notes and other things and she was very glad to make a settlement.” The settlements were effected without payment of any money. The following writing was produced, showing the terms of adjustment: “In consideration of settling the two suits now pending between Mrs.

E. A. Cunningham I agree as follows: 1. I agree to extend to Mrs. E. A. Cunningham and family my friendship through life. 2. I agree never to do or act in any manner to the disadvantage of Mrs. E. A. Cunningham. 3. In case I remain and occupy the house 31 Bond Street as I now do, I will rent to Mrs. Cunningham the suites of rooms she now occupies, third floor, attic and basement at the rate of \$800 a year. HARVEY BURDELL."

On the first of November, four days *after* the alleged marriage, he wrote to a cousin, "I think I should not have had any trouble with Mrs. Cunningham, if it had not been for Spicer, who joined her in her attempt to injure me; but all trouble is now at an end. I think she is a designing, scheming and artful woman. All her designs were to get me to marry her, but has failed." And even on the thirteenth of the same November: "There is no trouble now between me and Mrs. Cunningham. I think Mrs. C. will not make any more disturbance and that she will be quiet and leave 31 Bond Street as soon as she can with a good grace. I shall certainly get rid of Mrs. Cunningham by spring, and I may get rid of her now very soon—I assure you, as soon as I can get her out of the house I shall." And as late as December and January after the alleged marriage (killed on the 30th of same January), Burdell was proved to have declared: she was "a perfect fiend" and, would as soon dirk a man in the street as not; he was "afraid of her" she was "plotting;" spoke of her as "that woman down stairs," "a very artful woman who would outwit the devil." On an evening of this January, as late as the twenty-fourth, he exclaimed, "How am I to get rid of these devils? I must get them out of the house some way." "My God! what am I going to do with these people? they will have my life at last!"

He had been making arrangements to let the house 31 Bond Street to a Mrs. Stansbury; and about half-past two to three o'clock on the thirtieth of January Harvey Burdell told Mrs. Stansbury "it was all settled with Mrs. Cunningham—there would be no trouble." At that time he accompanied Mrs. Stansbury through the house and when the examination of the premises

had been made, read over an agreement to let and stated that Mr. Stansbury was to call the next morning to sign the document. The morning came and Harvey Burdell was dead in his room.

The closing passages in the argument of one of the counsel for the next of kin, before the Surrogate, will fit in here:

"I started this case with saying that it was connected with awful and most extraordinary circumstances; let me remark upon, let me exhibit some of them. Here is said to have been a ceremonial marriage; and yet, it is uncorroborated by any thing that follows such nuptials. And it occurs before a clergyman, in a large city; only ninety days elapse; and, still, most minds hesitate to believe it. If such a matter had occurred, without being connected with what was vicious and criminal, there would have been no difficulty, and a marriage might have clearly appeared. We are obliged to lay hold of vice, and cling to it, with a view to get at such an alleged marriage. It is remarkable that, with the concomitants usual about marriages, not one of them is to be found here:

1. In the place of matrimonial cohabitation, we have prior illicit intercourse, through the admission of Mrs. Cunningham. 2. Secret marriage, without a sufficient reason or motive. 3. No holding themselves out to the world as sustaining the honorable position of husband and wife. 4. No recognition among friends. 5. No visiting among or introduction to relatives. 6. Not known as husband and wife by servants, who saw them at all times. Meals in different houses, he continuing to board at the Metropolitan Hotel, and no change whatever in meals after the 28th of October; and, yet, he carries on his business in the house. Beds on different floors. 7. No mutual promises. 8. No record or letter turns up among Burdell's papers; no love epistles of his to her, showing or even leading to the idea of a marriage. 9. No change made in the house, nor in regard to a single piece of furniture, nor with the boarders or servants. Eckel and his birds still find a place in Mrs. Cunningham's bedroom. 10. No behavior between the parties as husband and wife.

"While, all the facts and circumstances which are in contradiction

of a marriage come overwhelmingly in the train of our remarks. Harvey Burdell must, indeed, have been a most degraded creature, if he were married, to have allowed all that was going on in that house. See how mystery hangs about this alleged marriage. Its very commencement carries suspicion. Dr. Parmly sees the strange man dressing up to perform a part in the *Clandestine Marriage*. The minister sees daylight through the man's whiskers. The wonderful betrothal ring which perfected the marriage in the street. The name of Burdell spelt wrong, and no legitimate attempt to change it. The fact of such a marriage being kept secret—of her not claiming position of wife. Nay, the whole thing is embraced in a secret marriage and an open murder. A marriage more extraordinary than the murder. A few words more—words of a negative, gloomy character; but carrying, if I mistake not, a power like that which lives within a storm-cloud, and may lighten up the whole. The circumstances attending the last night of Harvey Burdell's life, coupled with the occurrences of the following morning, tell most powerfully against the allegation of marriage. Not more than three months had passed. It is claimed that she loved him. He comes in the dark hour—coldness and night without; silence and darkness within. A silence and a darkness soon to be made more palpable—a silence disturbed only by the blow of the dagger; a darkness more lasting than ever settled in a living home—the darkness of the grave. Where was the would-be wife, when the click of his key sounded through the hall? Where was she, when he sought his room, their room? Would not a wife have had the gas lighted, and all common appliances ready on the coming home of a husband, instead of leaving it for him to light an assassin to his murder! No she-tiger was ever less given to sleep or more watchful over prey than was this woman over that man. If she was not secretly listening at his door, she was peering over the banisters; educating the eye of youth to peep through keyholes; and employing an old female servant to become a night-watch over women boarders, who, from delicacy, would shrink from the use of bath-room and closet, in the daytime, and move towards them in the undisturbed hour of evening.

"Where, then, was she, when—had she been his wife—she would have been with him, or in the bedroom adjoining, where, no doubt, the creature lurked who killed him! Where was she?—was this woman near to that remarkable bedstead which, in the daytime, hid the papers stolen from Burdell and in the dark hours of passion may have formed a 'hot-bed of lust!' If she had been his wife, he would have been in her arms that night. If she had been his wife, those arms would have held and protected him from the knife of the murderer; and gloriously would that woman have looked in the eyes of an eager court and at a bar of justice—prond would the city have been of her if she could—after murder had bared its arm—have held up her own and exhibited wounds got in trying to save a husband, instead of lifting up a hand of dalliance with the remarkable ring upon it. Oh, no! she would have you believe that she saw him not—the wife, married not over ninety days—the wife heard not the terrible struggle, the muffled murder cry, the echoless fall of a *husband*! Ah! this is not all.

"The morning comes. The streets are alive with light, with people and with sound. Bloody death in the room; the key hangs in the door, as though it marshalled the way and would invite attention; and yet the would-be wife comes in a line with that door, but goes not in or near, flits down stairs, no doubt fulfils her duties at the breakfast-table as bravely as did the unsexed wife of Macbeth at the banquet—goes up those stairs again, down which murder had sneaked and left a bloody mark; again comes in sight of the door, with its index, the key—flits past, and up to her room; and there she is, seemingly at rest, soothed, if rumor says true, with sounds emanating from the banjo of an incipient Snodgrass or by the canary birds of a full-fledged Eckel.

"It is left to a poor boy to discover the awfully-mangled humanity—to the old cook to go all the way from the kitchen to the room of this *widow sprung out of a coffin*, in order to tell of the death and murmur of the murder. And what, then, did this wife of ninety days do? Where would the wife of a day or of a whole life have then been? Quicker than the knife had descended would have been her flight down; and as sudden as the death-

fall would have been hers upon the dead body. No, her own room, and her own two-pillowed bed were best for the performance of the pathetic; and there she was—and believe it, simple truth and pure womanhood! believe it, stern justice and chaste sorrowing widowhood!—*there she remained*; and—there I leave her.

“I know not how or what your honor may feel when I, honestly, truthfully, put the matter thus. I will not ask whether it is possible to suppose that this woman did not know something terrible was going to happen. I have not heretofore and I will not at the present stage of the case—it would ill become me—put to you a question which in my introductory remarks I formed: Who murdered Harvey Burdell? But, when I present the other: Was Emma Augusta Cunningham married to Harvey Burdell on the evening of the twenty-eighth day of October, one thousand eight hundred and fifty-six? I feel I can well and confidently wait for your response.”

The Surrogate, Alexander W. Bradford, Esq., who had acted throughout in a most exemplary and patient manner towards parties, advocates and witnesses, gave a searching, methodized, clear, nicely-toned and elaborate opinion, ending thus:

“A series of circumstances, such as in Providence has been developed in this cause, showing at every step and link a connected and harmonious chain of evidence against this pretended marriage, cannot be fabricated. It is the result of a natural process. It strikes the mind with irresistible force; and leads to entire satisfaction and conviction that the decedent was unmarried at the time he came to his unhappy death.

“Let an order be entered, declaring that Emma Augusta Cunningham is not the widow of the deceased; and directing that letters of administration be issued to the decedent’s next of kin, on giving the proper security.” (Cunningham v. Burdell, 4 *Bradford’s Surrogate’s Reports*, 343.)

While matters were going on in the Surrogate’s Court and on the thirteenth of May (1857) the author received the following anonymous letter, covered by an envelope marked “strictly private:”

"NEW YORK, May 13th.

"DEAR SIR—The writer of this believing he has an important information for parties who are your clients, takes this method of opening a communication upon the subject. Will in a brief manner give you the heads of it, and certain conditions upon which the whole matter can be placed in possession of your friends; and leave you to comply with them if you consider it worthy your attention.

"Mrs. Cunningham or Bardell is or pretends to be *enceinte*, between five and six months. This you are aware of, no doubt. Arrangements are in progress to bring matters to the position that a healthy and vigorous child may be produced *in any event*. Of course it will be to the interests of your clients to be made aware of the facts." I can procure them for them. I am in the confidence of a party whom I cannot name now, from whom I can obtain *all and every particular*—one who is in actual association or employ, and your friends can know the whole *modus operandi* as they proceed. In one word, all their wishes, intentions and projects can be made known to them, *for a consideration*.

"And now to the conditions. If you deem it worth while to see the writer you can do so by advertising in the 'Personal' of the Herald to-morrow, that the proposed conditions are acceded to. Address, 'Stauhope.'

"The conditions are a single one, that if this advertisement appears, I am to be confident of your confidence and secrecy as to what may pass in a negotiation. That the advertisement will be an unconditional promise upon your part to the effect that I shall *in no way* be compromised with or to anybody; likewise, that if I call upon you, I shall not see, nor any person see me, except I am willing, and that if no arrangement is made satisfactory to me, that you nor none of the parties will take any steps to find out who I may be. In one word, that I may come and go to you or your friends in good faith and that all that passes at the *first* interview is strictly confidential, unless I consent to it transpiring to a third party.

"I shall be able to satisfy you that all I advance is authentic and to be relied on, and I only expect to be remunerated in case that what I promise I shall perform.

"Respectfully

"STANHOPE."

In the next morning's Herald newspaper appeared our answer, encouraging a meeting with the gentleman bearing the aristocratic name of Stanhope. When we got home, there was waiting for us in the front parlor the Stanhope—a man with blue glass spectacles, but who used his restless eyes (as some persons wearing glasses will) over or out of the sides of and not through them. Directly we saw him and his eyes, we thought of our silver forks and spoons.

After preliminaries, he stated how Mrs. Cunningham felt sure the Surrogate would recognize her as Widow Burdell; and, in connection with this, she intended to feign herself as *enceinte*. That he was employed to obtain a child and a nurse for it from Philadelphia. The nurse had been engaged; she was really a reputable woman, kept in ignorance of any fraud; was to be taken weeks before any seeming lying-in to No. 31 Bond Street (to which place Mrs. Cunningham had returned on her acquittal), and was not to know of any living baby until Mrs. Cunningham took pains to show it. From time to time this man who looked over and out of the sides of his blue spectacles reported progress, going back and forth between Mrs. Cunningham's and a certain law office in the lower part of the city. We gathered from the man that the Philadelphia plan could not be perfected, and that baby and nurse had to be nearer New York. With this passed away the man in spectacles, except that, once or twice afterwards, he flitted past us furtively in the streets.

The writer kept all this to himself. Now it will be observed that the information came to him on the 14th of May. It was not until the third of July thereafter that there was any inkling of an embryo heir. On that day, in the proceedings before the Surro-

gate, Mr. Gilbert Dean, one of Mrs. Cunningham's advocates, used the following language:

"If it were true that, in the ordinary gestation, a child should be born to Harvey Burdell, then not only all the ties of blood and nature, but all the dictates of humanity demanded that the court should lean in favor of that innocent unborn child, rather than in favor of those who had no direct claim upon the property. He would say nothing of the consequences of a decree of bastardy in advance. With consequences they had nothing to do."

Doctor David Uhl was a physician in New York—he had been examining physician to the coroners of the city—and Mrs. Cunningham was, at one time, his patient. While she was in prison awaiting her trial and during the pendency of the proceedings in the Surrogate's Court, she sent to Dr. Uhl. He would not go to the prison until after he had obtained an order from the District-Attorney. She intimated a wish that he should prescribe for her as he would for any woman exhibiting symptoms of being "as ladies wish to be who love their lords."

After her trial, acquittal and return to No. 31 Bond Street, she again requested the attendance of Dr. Uhl; suggested her symptoms; and desired to have his professional services—and a Dr. Catlin, of Brooklyn, was named as associate. She went through the various external gradations of child-bearing, growing larger and larger every week. Dr. Uhl remarked to her that, although she was so near the time of child-birth, there was yet no positive evidence of pregnancy, as it was, under the peculiar circumstances, important there should be; and he, therefore, considered it his duty to make a medical examination, in order to clearly establish the fact. Mrs. Cunningham said it would be well enough by-and-by and constantly put him off. When by-and-by came, she was still unwilling; and finally told him it was *fol-de-rol*, that she had not been pregnant at all—but she said—

"You have helped me thus far and now you must help me to carry it out and I will reward you handsomely."

Up to this time, Dr. Uhl had confidence; but this bold proposition took him aback. He, however, managed to leave without

betraying his true feelings; but went to his counsel, Mr. David E. Wheeler, who advised him to lay the whole matter before the District-Attorney, Mr. A. Oakey Hall. The Doctor accordingly stated the case to the latter, who advised him to go and carry the thing out. He was reluctant, but the District-Attorney told him it was his duty to do all in his power to develop the fraud. He, at last, consented. Dr. Uhl then went and told Mrs. Cunningham he had, under his professional hands, a California widow who was about to be confined and it was necessary to dispose of the child irrevocably, as the woman was going to join her husband in California. Mrs. Cunningham was delighted. It was further arranged that Mrs. Cunningham was not to know who the woman was, nor the mother to know what became of the child. He told her he had the woman at a house in Elm Street, where she was to be confined.

Matters had progressed thus far, when the District-Attorney deemed it necessary to have the co-operation of a physician who was not known in the city and, accordingly, obtained the services of Dr. De La Montagnie, of Fishkill, Dutchess County.

We cannot do better than here take up the latter's account:

"It was determined that I must provide the child from Bellevue Hospital. Accordingly I called at Bellevue, with a note from Governor Smith, and Governor Daly told me that I might make my own selection. I found a pretty, blue-eyed little girl, daughter of Elizabeth Anderson, which was born on Saturday; and the mother consented that I should bring it away on condition that I would take good care of it and bring it back that night. Dr. Uhl met Mrs. Cunningham by appointment at half-past three o'clock, and informed me that she was ready to carry out the thing and expected to be confined that day. He was to meet me at four o'clock at his office, but I was too late for that and met him at five o'clock at No. 190 Elm Street, a lager beer saloon kept by a respectable German. Dr. Uhl said she had agreed to be confined that night if he could provide a child by nine o'clock, in which case he was to go over and let her know at a quarter before nine o'clock, and she would send a woman to bring away the child in a

basket, which he was to provide. He said that after he left her he came to No. 190 Elm Street, and a few minutes after his return, as he was sitting on the window-sill, looking out, he saw Mrs. Cunningham pass the house, looking at it as she passed along very intently, as if to spot it. We then concluded that it was necessary to expedite matters. We sent immediately to Mr. Hall's house and had all the necessary furniture brought down for the room we had engaged. Mr. Hall sent down a carpet, a bed, a table, candles, some trunks and other furniture, not forgetting a basket for the baby. The great difficulty was to get an after-birth, to complete the whole thing, in order that Dr. Uhl might not be suspected. For this purpose I took a carriage and drove straightway to Bellevue Hospital again, leaving Dr. Uhl to arrange the furniture and take care of the baby. At the hospital, at eight o'clock, I got possession of the after-birth of another child, rolled up in a piece of silk oil-cloth, and also obtained the services of an intelligent Irish girl, named Mary Regan, to personate the nurse of the California widow and the baby. A medical gentleman, who does not wish his name to appear, also consented, for the fun of the thing, to act as the widow, lying in bed with a night-cap and doing the dismal groaning. He played his part charmingly, groaning terrifically when she came. With my load I drove as fast as possible to Elm Street, fearing the woman might get there before me. We stopped with the carriage at the corner of Broome and Elm Streets and proceeded to the house. Finding I was in due season, I went back and brought up Mary, the nurse. Dr. Uhl then hurried over to Mrs. Cunningham's to tell her it was all right. In the mean time Mr. Hall had posted a number of officers in judicious positions. Officer William B. Walsh of the Court of Sessions was stationed on the opposite side of Elm Street. Inspector Speight was stationed near No. 31 Bond Street, Inspector Hopkins at the alley in the rear on Bleeker Street, and Inspector Dilks was posted in front of Burton's Theatre, commanding a view of the whole of Bond Street. While Dr. Uhl was gone, the medical gentlemen assisted me in removing the traces of the old umbilical cord on the child, cutting it very

slightly, and binding it over with a piece of silk handkerchief.

"The medical gentleman then put on his night-cap and went to bed, ready to do the groaning. I marked the child slightly with nitrate of silver behind one ear and in other places, and then went down stairs and stationed myself on the opposite side of the way, with officer Walsh. We saw no one enter or leave the house, it was done so quickly and stealthily. In a few moments, Dr. Uhl came back and stood in the doorway some time. He had on white pants and a white hat. He then went in. About five or ten minutes after nine o'clock he came across the way and asked if we had seen the woman go in or out. We said, No; and he said she had been there, and must have gone right up Broadway to Bond Street. Officer Walsh immediately hurried to Bond Street, and stationed himself under the stoop of the house next door to No. 31. I rode up Broadway to Bond Street and communicated with Inspector Speight, who informed me that no woman had gone into the house. He said a woman had gone out dressed in dark clothes; a man had gone out wearing a white hat and white pants, and a dark coat (Dr. Uhl); and immediately after another man had entered. I then went to the corner of the Bowery to wait for the return of the woman with the basket. In a little while I saw coming in the distance a great basket, borne by a woman with dark clothes, a very peculiar dress like that of a nun. I walked close up to her, so near that I identified the basket as the one that came from Mr. Hall's house, which I had seen with a baby in it at the house No. 190 Elm Street, twenty minutes before. I followed on the other side of Bond Street until I met Speight, and said to him :

" ' Do you see her ? ' "

" ' Yes,' he replied, ' that is the woman that went out and down to Elm Street.' "

" She went into the house and the door was shut. I may as well mention here Inspector Speight's adventure, as he related it to me. He said that when he saw the woman come out of the house in Bond Street, he followed her at a distance, and saw her get into a

car in the Bowery. He then jumped in at the other end of the car. The conductor came up to him and said,

“ ‘Halloo, captain, that’s Mrs. Cunningham, ain’t it?’

“ One or two of the passengers heard the remark, and asked him to point her out; but he said, ‘Oh no, that isn’t the woman.’

“ She sat perfectly motionless until they reached Spring Street, when she jumped out without stopping the car. Speight followed her down to Elm Street and down the west side of that street, when she went into a lager beer saloon, and he rode back to his post and waited till he saw her return with the basket. He thought she chose a very foolish dress, the nun-like dress making her very conspicuous. It had been arranged between Mrs. Cunningham and Dr. Uhl that he was to go out of his house before nine o’clock, and she was to send for him two or three times in hot haste. Accordingly Dr. Uhl now went up to his house in Twentieth Street, where he found on his slate a very urgent call for his immediate attendance at No. 31 Bond Street. He then returned and went into the house which was closely watched until midnight, the time agreed upon to get through with the confinement. Dr. Uhl then came out, and as he walked along with a friend whom he had accidentally met in Broadway, some of the officers watching arrested his friend, supposing him to be Dr. Catlin. Dr. Uhl then stated that Dr. Catlin was expected to stay all night. A consultation was then held as to the best way of getting into the house without creating a disturbance in the neighborhood. While this was going on, Dr. Catlin fortunately came out of the house, and officer Wilson followed and arrested him. [This Dr. Catlin should not be confounded with one of the same name living in Brooklyn. The former is the one who testified so readily on the murder trial that Mrs. Cunningham sewed with her left hand because she had had rheumatism in her right. He attended Mrs. Cunningham’s husband in his last illness, and it is reported that Mrs. C. had said that she had him in her power.] It was discovered that Dr. Catlin was expected to return shortly, and Mr. Hall then proposed that Captain Dilks and myself should go in his place. We rung the bell once, but it was not answered. We then rang violently,

and it was opened by two women, who came down stairs and asked why we disturbed the house at so late an hour. We told them that we understood that a doctor had been attending Mrs. Burdell, who had been intercepted, and under the circumstances we thought that justice demanded a full investigation of the case at once. They said Mrs. Burdell was very sick and must not be disturbed. One of the women said she would go and see her, and we pushed by the others and followed up stairs to the second story, front room (Dr. Burdell's old bedroom). The woman said,

“ ‘Mrs. Burdell, here are two gentlemen who want to see you.’

“ ‘Shut the door ; don't let them in,’ she cried in a very loud tone ; but while this was going on, we slipped into the room. The baby was lying on the bed by the side of the lady, and I recognized it at once by its features as the one I brought from the hospital. There were two nurses in the room ; the light was drawn low, and there was some warm drink over a nurse-lamp, which one of the women would occasionally feed to the patient, raising her gently. I examined the baby closely and fully recognized it. One of the nurses took it up, and Dilks said we had come to investigate the matter and see if it was all right.

“ Mrs. Cunningham said she was very sorry to be disturbed so. Dilks then stepped out to bring up the other officers, and in the mean time I asked her :

“ ‘Is this Harvey Burdell's child ?’

“ She said: ‘Of course it is. Whose else could it be ? It is my own dear little baby.’

“ I said: ‘Let me look at it.’

“ She objected. I told her I was a medical man, and would not hurt it. I wished to examine it. It was a very nice baby, and no doubt it was all right. By this time all the officers had come in, so still that I did not hear a step, and among them was the medical man who acted as the ‘California Widow.’

“ I said to him: ‘Let us untie this string, and see if it is the same bit of handkerchief we put on it a few hours ago.’

“ Mrs. Cunningham shouted, ‘Don't disturb it; let it alone.’

“ We then removed the bandages and found it was the same.

Mrs. Cunningham was evidently under the influence of opium, given to make her look pale the next morning, and had not apparently recognized any one. The officers then said they would arrest the whole of them, and the women declared they would not be arrested. It was finally decided to leave one of the women in the care of Mrs. Cunningham, and take the other to the station-house. Mrs. C. continued to groan as if in pain, and to be fed with warm drink, although the officers told her the game was played out. She wanted to have her child back, and one of the women gave it to her, when she hugged it tightly to her breast. We thought she intended to kill it, and two of the officers seized her arms and pulled them apart, when it rolled out on the bed. I then took it out and carried it back to the hospital. I gave it into its mother's arms about one o'clock in the morning, where it still reposes. Governor Daly has declared that, in view of the important part the child has played to carry out the ends of justice, its name shall be 'Justitia Anderson.' "

Here is a ballad which was rife at the time :

THE BLESSED BABY.

Tune—Jordan—Boots.

THEY have had a long trial about Burdell's pile

Of money and estates; according

Mrs. Sharpingham she smiled, says she, I'll get a child

That will take it to the other side of Jordan.

Chorus—Then pull off your coat and roll up your sleeve,

Thirty-one is a bad house to live in,

For the people there, you know, don't give you any show,

But go right in for the killing.

Mrs. Sharpingham sent for a Dr. You'll

Dr. You'll come to see her according ;

She offered him a thousand if he'd get her a child

And bring it where she was at present boarding.

Dr. You'll pretended to do all he could,

But instead of that he goes to Haul a-puffing,

Whom he told all he knew, and promised for to help

Him to send her to the other side of Jordan.

A. Oakey Haul thought he would have some fun
With Mrs. Sharplingham and Dr. Catling ;
So he takes a trip to Bellevue and brings him back a child,
And takes it up to Elm Street a prattling.
Then he sends for Mrs. Sharplingham to come and get the child ;
Mrs. Sharplingham she came along according ;
She put it in a basket and took it right straight home,
Then went to bed quite sickly and a-groaning.
But Popkins, Wash and Dicks were up to her tricks,
Went up to the stoop and gave the bell a ringing.
They went into the house and arrested all therein,
And they'll send them to the other side of Jordan.

At the time that Mrs. Burdell Cunningham was said to be desirous to manufacture an heir for the Burdell estate, it was observed that Mr. District-Attorney Hall had ordered her *immediate confinement*.

A benevolent Quakeress was in the habit of visiting New York jails. She approached Mrs. Cunningham while the latter was in the prison called the Tombs, and began to hint of spiritual matters, and to offer her sisterly services. Mrs. Cunningham, in a very abrupt manner, gave the Quakeress to understand she could take care of her own spiritual as well as bodily wants. The Quakeress, nothing daunted, still hinted that, possibly, she might require a friend, and one woman could often serve another woman in situations where men would not act. Mrs. Cunningham defiantly waived her off; giving her still to understand she could take care of herself; and that, as to what was charged against her, there was no proof which could be brought against her.

"Art thou sure of that, Emma?" asked the Quakeress.

"Sure! yes; sure. What do you mean?"

"Why, Emma," responded the other, "they do say that thou dost talk in thy sleep."

The moment this was uttered, Mrs. Cunningham grew deadly pale and looked deadly cold.

"And what!" exclaimed she, hurriedly, "what do the people state I say when I am asleep?"

"Oh, I do not give heed to what people say ; but they do state thou dost talk in thy sleep ; and so, perhaps, thou wilt consider whether I can serve thee in thy tribulations."

It is said that Mrs. Cunningham became subdued before this Quakeress, and thereafter studiously listened to and desired to have her near her in sleeping hours, and paid her almost offensive attention.

If Harvey Burdell was done to death for his supposed wealth, those who were concerned in it would have let it alone, on knowing that about ten thousand dollars was all that was likely to be realized from his whole estate. This amount, and no more, was divided and subdivided into eighths, sixteenths, and twenty-fourths, and distributed among many heirs at law. The personal property, some four thousand dollars, was not sufficient to pay debts and charges. The deceased had purchased No. 31 Bond Street, subject to a mortgage for ten thousand dollars ; and on foreclosure there remained a surplus, which, with a small property at Herkimer, made up the whole residue so divided and subdivided.

A year or more after all proceedings touching the Burdell matter had passed, the same personage who accosted the author in the Park and suggested about the man John, came to our office and said that John had returned to New York, broken down by fever contracted in the Western country and by poverty and hunger ; that he had made an appeal for relief to Mrs. Cunningham, but had been repulsed ; and that he could be seen at a certain house in Reade Street on a certain evening. The dislike which the author had for some time felt in keeping actively alive in his mind the Burdell matters, made him not heed these suggestions ; and he knows not what the man John had to say, nor what ultimately became of him.

There is one thing which must strike the mind : here was a ceremony and certificate of marriage made and occurring about three months prior to the murder. Now, what was the ostensible object ? Harvey Burdell, in life, would have been able to repudiate them ; and he was an obstinate-minded, healthy man, and likely to live as long as Mrs. Cunningham. It certainly may be she thought

she could, when ready to draw the threads tight, manage to get a court to conclude a marriage. But putting aside this improbability, we see no use to her in a marriage—and that, too, kept secret—save in reference to a man who had first to become a dead one before he should be claimed as a husband during life.

THE JEWELS OF THE PRINCE AND PRINCESS OF ORANGE.

It is generally thought that police officers are the only men to track out and secure rogues and stolen property; and that lawyers can but advise and defend, or aid in the prosecution of felons. Legal men, however, are not to be thus narrowed down; they can, whenever they have the incentive to set about it, wind around and mark down a villain, away from court and office, fearlessly and as cleverly as any officer of justice. Police officers, indeed, pass for much more than they are worth. Their want of education generally is against them. They are like hunting-dogs, which have got to be trained and placed on the scent, and, then, they run true; but they are not usually able to originate. A remarkable proof of this is to be found in the following case, wherein Mr. William A. Seely of the New York Bar figures very favorably.

On a night in the month of September, 1829, the palace in the city of Brussels, the residence of the then Prince and Princess of Orange, was feloniously invaded by one Constant Polari, otherwise calling himself Carrara; and the imperial insignia, jewels and personal ornaments of the princess, consisting of about two thousand and ninety-one carats of diamonds, and about thirteen thousand four hundred and sixty-two pieces of a very rare and peculiar description, being court jewels, were stolen from the palace, amounting in value to several hundred thousand dollars. Among the many articles taken by the felon were two large and brilliant diadems of the princess; a portrait, set in brilliants, of the Emperor Paul of Russia and the Empress Maria; a gold bracelet, with the portrait of her brother, the late Emperor Nicholas, engraved upon an amethyst; two bracelets, with the initials of the then King William the First of Holland, and father of her husband, the then

Prince of Orange, of the queen, his mother and their family, in turquoise set with hair ; portraits painted in their youth, of the Grand Dukes Alexander, Constantine, Nicholas and Michael, the brothers of the princess ; and a turquoise and gold talisman bracelet, to which the princess was stated by the minister to attach a special importance far beyond its intrinsic value.

The palace, at the time of the larceny, was unoccupied, except in the basement for domestics, the prince and princess then being at their summer residence. The discovery of the theft, on the morning after its perpetration, aroused a feeling of intense excitement. The government of the Netherlands, by proclamation, offered a reward of 50,000 florins, equal to \$20,000, for the recovery of the property.

The consul for the Netherlands in New York proclaimed this reward.

The Chevalier Huygins, minister from the Netherlands, retained Mr. William A. Seely in the matter.

A year and ten months transpired between the perpetration of the felony and the arrival of the culprit in the United States. During all that period, a most impenetrable mystery, owing to the adroit manner in which the felon had concealed his purposes, had hung around it. The remissness of the prince in his pecuniary engagements in Holland was, at this time, notorious ; and, from causes unnecessary to be explained, a general credulity had begun to prevail there that a robbery could have occurred so great in magnitude and of articles so susceptible of identification. Rumors eventually became impressed on the public mind, implicating him as having himself appropriated the jewels to his private purposes.

The Palace of Lacken, where the crime was committed, is celebrated for its peculiar beauty ; and was so, too, for the exceeding splendor of its furniture, which had been, principally, presented to the princess by the imperial court of Russia. The general facility of access in Europe to such buildings during the absence of the ordinary occupants is known ; and it is not improbable that the felon may, in this way, have obtained a view of it. The jewels

purloined by him had been kept in a piece of furniture of the palace, in external form and appearance much after the fashion of the ordinary writing-desk in use in the United States, of which the door falls down to form the writing-table, and to give access to its paper and writing materials behind it. This door, when closed, was faced on its outer front by a large plate of looking-glass, upon which the use to which the upper portion was applied was indicated, in plain gilt lettering, by the words *caisse des diamants*. The felon, probably, thus having seen the indication of the contents of the article in question on the night for perpetrating the felony, with the assistance of a small ladder, passed over the rear wall of the square on which the palace is situated, and which alone was not guarded by sentinels, into the garden in its rear; thence up to and on the terrace steps, opening from the palace to the rear garden. The door was not fastened. Through it he went directly for the jewels to the place on the same floor, at but a short distance, broke the front plate of glass, possessed himself of them, and returned again through the garden to and over the wall, by the aid of the same ladder, with the property in his possession, and threw the ladder into a ditch near by. He, on the same night, no doubt, immediately and unobserved, went out of the city of Brussels a mile or two, and there buried the entire property in the same state in which he had obtained it, returning directly on the same night to his ordinary residence in Brussels, and to his work as a mechanic, on the following morning, as if nothing unusual with him had transpired. No part of the property had been kept about him or converted to his use. He thus had entirely avoided all suspicion.

When the public mind had settled down, he sent for a loose woman and their child; dug up the jewels, rudely and unskillfully forced them from their settings, injured the value of some; possessed himself, in their dissevered state, of about two-thirds—\$400,000 in value—reinterred the residue, with the settings, portraits, diadems and other articles most likely to betray him; informed the woman (who was to accompany him as his wife) of the place in which he had reinterred them; abandoned his labors in

Brussels; and, with the jewels which he had thus again possessed himself, concealed in a hollow walking-stick, a hollow umbrella-stick and a hollow toy for his child, and upon the person and in the apparel of the woman, he passed out of Belgium on foot, through France, where he disposed of about \$8,000 dollars in value from among the smaller jewels and of most ordinary sale, for personal expenses and passages to the United States. He sailed from Havre, arrived in New York, and landed with the jewels, eluding the officers of the customs. He engaged board and apartments at a very respectable French boarding-house in New York, at which one Roumage resided. The latter was a shrewd, educated Frenchman, but without moral rectitude. He gained the confidence of the woman, and beguiled her into an acknowledgment that her husband had purloined the jewels of the Princess of Orange. He also managed to get specimens of them from the felon, on the suggestion that he could probably effect their sale. Roumage went to Chevalier Huygins; and (with the understanding that Roumage was not to be known in the affair) got from the minister a written engagement to pay him 50,000 florins on the latter receiving sufficient information to secure the properties. On the minister's conferring with Mr. Seely, the latter laid open the character of Roumage to the Chevalier, informing him how he had recently, as his counsel, obtained his acquittal from a grave and serious charge of arson, for which he had been indicted and put on trial for his life.

From the indications of Roumage, the officers of the customs had taken from the felon about one-half of the jewels he had brought with him to this country, leaving him so on his guard that he was enabled to evade the attempts subsequently made on that evening by Mr. Seely for his personal arrest; and he escaped to the room of Roumage, in another and distant part of the city, where he remained with him during the night, yet unaware that Roumage had been his betrayer.

One morning, before sunrise, Roumage conducted the felon with his wife out of the city of New York to Brooklyn, leaving them there to return to the city and to apprise the Chevalier Huygins

where another attempt might be made to effect the arrest. While Roumage was doing this, the culprit, without the knowledge of Roumage, and yet unaware of the disclosures by his wife, took her with him to a wood, near the now Greenwood Cemetery, and there buried the portion not seized, amounting to perhaps \$200,000 in value, in an almost inaccessible thicket; and so marked surrounding objects as to enable him or his wife, by angulation from those objections, to find them, should circumstances render it advisable with either to repossess them. He then returned to Brooklyn and secreted himself, leaving his wife to return to the city of New York and concert with Roumage what he would advise to be done.

It was soon after and on that day suspected by the felon that Roumage was treacherous; but he did not apprehend the disclosures by his wife to Roumage. Through her Roumage obtained and gave indications for the arrest to another Frenchman, who had been persuaded by the culprit and his wife to aid in his concealment, but who, for a bribe of two thousand dollars paid him, agreed on the afternoon of the next day to bring Carrara, in the dark of the night, to a place indicated near the now South Brooklyn Ferry, where officers would be stationed for his arrest. The culprit had, before his arrest, been advised by this man that from the Brooklyn shore he could escape by water round the city of New York to Hoboken, and thus elude the officers of the police; and if, at about nine of the evening, he wished to be conducted to the Brooklyn shore, a boat should be there for that purpose. At the designated hour, this man and another of his selection, with the felon, accordingly came to the shore. On reaching it, he asked, in French, "Where is the boat?" Police officers, stationed within about twenty feet from him, about fifteen in number, were concealed from him by the darkness of the night, but were heard, in rising to effect the arrest, by the noise of their feet. The felon exclaimed to the Frenchman, "Brigand, thief, you have betrayed me!" and sprang back up the hill he had just descended towards the shore, seeking to escape with the greatest energy. So great had the anxiety of the Chevalier Huygins been to assure himself against the possibility of Carrara's eluding an arrest by the

use of a large share of the jewels, that he had, on the evening previous, earnestly entreated Mr. Seely to be present at the arrest, to guard against such a contingency, the Chevalier himself, on this attempt, waiting within sight, doubly to assure his object. On the second attempt and the last, Mr. Seely alone was present, and to prevent the escape himself pursued the culprit, with the officers. The latter leaving him to lead them, brought Mr. Seely into contact with the felon.

Having been thus overcome, he was ironed and conducted to the city of New York by the officers of the police of that city and Brooklyn.

The matter was complicated by the collector of the customs claiming a forfeiture of the jewels. On an after day, Roumage, having probably discovered from the wife the place of interment of the jewels near Brooklyn by the felon (on the morning of the day he had conducted him to Brooklyn), and aware that both the minister, the collector, and, in fact, everybody but the wife were ignorant of the place, called on the minister with six pieces of the jewels which had been buried there: one, a large sapphire stone, which, it was stated by the minister, the Emperor Alexander had given to his sister the Princess of Orange, and for which he had paid in Paris \$12,000; another, a large diamond with a notch in it, occasioned by the rudeness with which the felon had forced it from its settings, and said to be worth about \$17,000; another brilliant of a long form; two large pearls of pear shape, which had been taken from a pearl ornament, and an emerald of a square form.

Roumage, fearing defeat in his hopes of sharing in the forfeiture insisted on by the collector, and knowing that the prisoner was aware of his treachery, and that if he should be released from the arrest, he had threatened his life, now thought it best to aid the embassy by the accumulation of proofs for the detention of the felon. He accordingly obtained, through the wife, from the buried box, and placed in the hands of the Chevalier Huygins, those six pieces, requiring a receipt acknowledging that they were held in deposit.

In accounting to the minister for the manner of procuring them, he falsely alleged that a person had called at his residence who had discovered in the possession of another person some of the jewels which he thought might have been given or confided to him by the felon. Roumage asserted that he had claimed and obtained them by threats, and, as he alleged, in order that they might be delivered to the minister, and that they should aid in the proof of identity; that he had been obliged to promise secrecy to the person from whom he had obtained them; that if the minister would also promise secrecy he had the hope of procuring still more through the disclosures of the felon's wife; that if the minister would show them at the custom-house, the fact that he had them would be discovered, and would prevent his procuring more. Roumage, at the same time, showed to the minister an umbrella of brown silk with which the felon, at the time of the seizure by the custom-house, had carried many of the jewels out of his house, Roumage adding that the officers had been so simple as to let the felon carry the umbrella away without examining it. Roumage suddenly disappeared, as well as the wife of the felon.

Measures were immediately set on foot to discover the direction in which they had been taken; and from that time the restitution to the princess of four-fifths of the whole felony depended entirely upon action in regard to them out of the United States. Among the larger portion yet thus to be obtained were those most interesting in family relations and which were most prized—of which the recovery now depended entirely upon the prompt action of Mr. Seely.

Roumage had taken his place, on the evening previous to the discovery of his escape, by the mail stage, for Philadelphia, incautiously inscribing in the way-bill book in the New York stage office, in a disguised hand, "Mr. Roberts and lady." This discovered, Mr. Seely immediately dispatched an officer (whom he had before employed to keep both the wife and Roumage under a strict *surveillance*) by express to Philadelphia, where, on his arrival, it was discovered that Roumage had already taken passage for Liverpool by the packet-ship *Monongahela*, with the wife of the felon, as

his own wife; and had just cleared the capes of the Delaware, having gone on board with a crutch, pretending to be afflicted with the gout, and with the umbrella of the felon before alluded to. The officer having returned to New York by express, Mr. Seely put him on board the packet-ship *Sylvanus Jenkins* for Liverpool. The two vessels arrived in St. George's Channel together—the packet from New York landing the officer in Liverpool long enough before the disembarkation of Roumage and the wife of the felon to enable the officer to have his papers inspected and endorsed by the police of Liverpool and return to the docks of that city, to await the landing of the culprits. They were arrested at the docks with the jewels; and mutually accusing each other, they were separately conducted to London, whence they were separately and immediately dispatched, by order of the British Government, as felons, to the Hague, with the jewels (without pretence of forfeiture or delay of any kind), and whence the officer referred to, under the direction of the wife of the felon, proceeded from the Hague to Brussels, disinterred the jewels, portraits and settings yet buried there, and restored them to the princess. Thus, through the agency of Mr. Seely, securing to her the restitution of the entire felony, with the exception only of those which the felon had sold for his personal expense, and that portion yet in jeopardy in the possession of the New York custom-house.

A pardon for the felon was obtained by Mr. Seely from the minister of the Netherlands, on the sole condition that he would consent, at the expense of the government of the Netherlands, to go to the Hague and there confess and explain the incidents of the felony; and an engagement on the part of the same government was coupled with it to pay the passages of the culprit and his child, who was, in that event, to go with him, back to the United States, when he had done so, if he wished. Ultimately, the jewels seized by the officers of the custom-house were delivered to the Chevalier Huygins, on the understanding that the principle of *de-benture* attached to them and they were taken by his excellency to the Netherlands. In this way the princess had restored to her

the whole of the articles, except only the small portion which Polari had sold and expended for his personal use.

In this affair, as may well be supposed, Mr. Seely had gone to a very great outlay; and sacrificed for a long period of time a lucrative practice, bringing all his energies and talent to bear upon the unravelling and satisfactory ending of this, one of the most important criminal cases of modern times.

And how does the reader think Mr. Seely was rewarded? Was an order of merit offered, and a round and generous sum in guilders sent to him through minister and consul? Remember, that a mere reward of \$20,000 had been offered. Alas for Dutch generosity! The only offer was 6,000 florins, equal to \$2,400 of American currency, as in full of all his services, sacrifices, and indemnities—a sum actually less than Mr. Seely's necessary personal expenditures in going to and while he was at the Hague, where he went for some proper satisfaction for his services. He declined so ungenerous an offer, and left the Hague in disgust. The United States Government was urged by Mr. Seely to press his claim for proper remuneration; and although it took up the matter, still delay followed delay, and up to the moment of Mr. Seely's death no remuneration had come.

MONROE EDWARDS.

Rogues, like murderers, always leave one small door open. In other words, the machinery of wicked ingenuity is never perfect.

There was a case in Pennsylvania where a man would have got away after stealing from a house, if a shower had not come on, which caused him to take an umbrella from the hall. Its discovery in the hand of a person on the road to whom he had made a free gift of it after the rain was over, shut him up as closely as the umbrella.

Monroe Edwards, *alias* John P. Caldwell, *alias* Hugh S. Hill, calling himself Colonel Monroe Edwards, had become intimate with Alexander — Powell, through whom a professed gambler, named J—— S. Winfree, also bearing the warlike addition of

Colonel, was introduced to Edwards. The latter had come across a pretty mulatto girl, called Kitty Clover, and she travelled with him in boy's clothes.

Monroe Edwards was not of the common class of forgers, who imitate signatures and put spurious notes in circulation. Men of that kind are known for mere accuracy in simulating and a want of forecast. Monroe Edwards was remarkable in the latter quality. And he did not start with imitations. He might have to do it in the progress of his game, and also, in a secondary way, copy a post-stamp, the better to give his own *alias*-letters a seemingly proper cover; but he worked mainly by brain and gained through fiction what others accomplish by immediate and matter-of-fact imitation.

It is evident that when this man thought of an end, he, at the same time, pictured to himself every possible intervening occurrence which must take place and, also, provided for them—so that all he did in crime had, from first to last, the appearance of truth and honesty. And his personal appearance was in his favor.

And yet the misspelling of the little word few, thus, "fiew," was a main cause of his condemnation.

Maunsell, White & Co. was a commercial house of high standing in New Orleans. Edwards commenced his game by a wish to obtain their signature and to find out who was their agent in New York. On the 9th of July, 1841, he wrote a letter to them from Philadelphia, under the signature of Hugh S. Hill, stating that he and his brother had lately become proprietors of a large cotton estate in Phillips County, Arkansas; and were desirous of forming an engagement in Philadelphia for its agency, but they would not want any advance until the first crop was in hand, and not even then beyond what was usual for plantation supplies. He, also, stated that Mr. Gray, of Richmond, had recommended their house.

This brought a response under date of July 24, 1841, in which Messrs. Maunsell, White & Co. said:

"We feel much gratified at the confidence you repose in us, by offering us the agency through the recommendation of our friend,

Mr. Gray, of Richmond, and you may rely upon our best exertions for your interest." "We have no particular correspondent in New York, though we have no doubt our firm is well known there; and should you purchase any articles to be consigned to our care, you will find no difficulty in shipping them through the house of Brown, Brothers & Co., or Prime, Ward & King, or Joshua Clibborn."

In July of the same year, Winfree had written a begging letter to Edwards for fifty dollars. He answered, under date of the 28th (of July), he had no spare money and that he intended to go South that very night. "He would stop for a *few* days, however, in Prince William County, Virginia."

Powell, at this time, was living in expensive style at Washington, where he had gone, in the hope of inducing a relative in the Senate to obtain for him the office of bearer of dispatches to the Court of St. James. He and Edwards were considered to be much alike and the latter ultimately dressed like Powell, to carry the resemblance nearer and to throw on him the guilt of his (Edwards's) acts.

While Edwards was in Philadelphia, he had come across an English *mauvais sujet*, named Child, calling himself Nicholas Johnson and boarding there with a Mrs. Phillips, who had grown-up daughters, the youngest named Caroline. Edwards had Child to dine with him at his hotel and the former induced the latter to enter on the register of the house, while unobserved by the person behind the desk, the fictitious name of Hugh S. Hill. Edwards explained that his only object for this was, to play a joke on one of the ladies of the house, who daily expected the arrival of a lover of this name.

Thus, it will be seen there was an apparently real personage for the "Hugh S. Hill" signed to the letter directed to Messrs. Maunsell, White & Co.

Edwards, then, set about the manufacture of a letter stamp or post-mark, similar to the one used in the Government post-office at New Orleans. The object of this was, to give an authentic symbol to the spurious letters he intended to prepare in the name of

Maunsell, White & Co., so that they might seem to have come regularly through the mail from thence.

He now takes up the name of John P. Caldwell, writing in his favor as from Maunsell, White & Co. to Messrs. Brown, Brothers & Co., of New York. Letter, seemingly, dated from "New Orleans, 10 August, 1841." It introduces "our friend Mr. John P. Caldwell, now on a visit to Virginia, written as 'that he wishes to command twenty-five or thirty thousand dollars.' As the best means of meeting our friend's wishes, we have taken leave to enclose him a letter of introduction to you, with a request that you afford him the facilities he requires, provided you find it convenient, safe and profitable to yourselves. Mr. Caldwell has in our hand (subject to no charges) one thousand and eleven (1,011) bales of cotton, weighing 465,000 lbs., quality averaging 'good fair' and worth in the market, at present prices, at least fifty thousand dollars. This cotton arrived late in the city and by our advice has been held to sell with the new crop just coming in."

Now comes again the unfortunate "*fiew*."

"Mr. Caldwell and his family are amongst the very *fiew* planters of this State who are entirely free from debt and he is a solvent and very wealthy gentleman. . . . We shall be thankful for any attention shown our friend during his stay in your city."

Then Edwards went to the Eutaw House, Baltimore; and there prepared a document, purporting to be an agreement of partnership between himself, Monroe Edwards and one Charles F. Johnson, the ostensible object of which was the purchase of negroes in the French West Indies and their transfer to the more marketable clime of Texas. The capital stock of this visionary partnership was set down at two hundred thousand dollars, Edwards furnishing for his share ten and a half leagues, or fifty thousand acres of land, and Charles F. Johnson contributing the sum of fifty thousand dollars in cash and two hundred and fifty negroes then in Martinique, at the rate of two hundred and fifty dollars each. The business of the firm was to be conducted in the name of Edwards; and, that he might operate at once, the fifty thousand dollars was to be paid to him in gold and silver or current bank notes at the sealing and delivery of the articles.

Edwards invited Child, who, it will be remembered, signed the name of Hugh S. Hill upon the register-book at the hotel in Philadelphia, to come to him at the Eutaw House in Baltimore; and there got him into the mind to sign this agreement as though he were Charles F. Johnson. The proprietor of the Eutaw House and one of his clerks were then called in, when Edwards, in their presence, formally executed the instrument on his part, in his own name, while Child signed it on the other, in the name of Charles F. Johnson—mine host and his clerk becoming subscribing witnesses.

Thus Edwards would have about him a document showing his general wealth. But still no money had been seen to pass. So, when he got back to Philadelphia and having, in the mean time, taken rooms at Mrs. Phillips's, he made an offer of marriage to Caroline, her youngest daughter, proposing to settle on her twenty thousand dollars the day they should be married; and, as if carried away with the vehemence of his love, he went to his room and returned with two large packages of seeming money, from one of which he counted upon her lap twenty thousand dollars in denominations of one thousand and five hundred dollar notes. At his solicitation in connection with this amount she, furtively, agitated, passed them through her hands, but was too bewildered to observe their spurious character. While thus employed, our Colonel Edwards pointed to the other package, and observed how it contained a much larger amount. The girl was willing to receive him as a suitor, on her mother's consent.

Edwards must have had some one who helped him cleverly to get letters to their destination bearing false postage-stamps, for these reached proper hands without having passed the ordeal of the post-office at New York.

Brown, Brothers & Co., instead of writing to Maunsell, White & Co., New Orleans, sent to the branch house of the former, Brown & Sons of Baltimore, and received an assurance of the high standing of this New Orleans house. Then, Brown, Brothers & Co. replied to it that their wishes in relation to their friend Mr. Caldwell should be duly attended to and respected.

Edwards, too cunning to come in person as John S. Caldwell, mailed a letter, subscribed in the latter name, to Brown, Brothers & Co., under date "Alexandria, D. C., August 25, 1841." This was directly after the firm had written to Maunsell, White & Co., and before their letter could have got to New Orleans :

"MESSRS. BROWN, BROTHERS & Co.: SIRS—I am in receipt of a letter dated 10th inst. from Maunsell, White & Co. of New Orleans, enclosing a letter of introduction to you and in which I am informed they have written you to advance me the funds I want on the security of the cotton in their hands or to get my bills upon them discounted to the amount of thirty thousand dollars. I should come on in person to New York, but am prevented from so doing by the dangerous illness of my young brother, who is with me in this neighborhood and is now lying in a very precarious situation, so ill, indeed, that I cannot leave him for a single day. Thus circumstanced, I herewith hand you my bills of exchange on Messrs. White & Co. for \$26,000, at thirty and sixty days' sight, which you will please get discounted at the best rate and forward the proceeds to me to this place in a bill or bills upon Richmond. If, however, it would be an object to have the cotton in the hands of Messrs. Maunsell, White & Co. shipped to your agent at Liverpool, that plan would suit me as well, having several times shipped our crops on our own account; and in order that you may avail of it, if you like, I also hand you an order on Messrs. White & Co. to be used if you prefer, if you accept this proposition. I want \$25,000 advanced; the cotton can be then shipped—and when sold, the residue of the proceeds can be placed to my credit and Messrs. White & Co. advised thereof. I want to buy some hands for our plantations here and am very anxious to send them out immediately as they may assist in gathering the new crop. 'Tis, therefore, of vast importance to me to close this transaction at once. If suitable bills cannot be had on Richmond, they will answer on Baltimore or Washington, but Richmond would be preferred, as I want to use Virginia funds; and if sound bills cannot be had on either place, then a letter of credit, directed to one

of the Richmond banks from one of the New York banks, I presume, will answer. Your early attention to the foregoing will confer on me a very great favor. I am, gentlemen, respectfully,
your servant,
"JOHN P. CALDWELL."

Messrs. Brown, Brothers & Co. responded, under date of August 28, 1841, enclosing funds to the amount of \$25,119.52; and adding, "We feel much indebted to Maunsell, White & Co. for the pleasure of your correspondence, but regret exceedingly the cause which prevents us from making your personal acquaintance, though we hope still to receive a visit from you on some later occasion." This letter contained seventeen checks and certificates of deposit on brokers and on banks of Richmond, Norfolk, Fredericksburg and Petersburg, which made up the above total.

Edwards had a good deal of trouble in getting these cashed, as several of the parties required identification. One of these drafts, for \$494.45, was on Johnson & Lee, Baltimore; and it was paid in gold. A boy who counted it out put it in a shot-bag, so that it might be carried more conveniently. This bag was stamped with the mark of the firm "J. & Lee." At the time of getting all these cashed, Edwards was made up in cut of hair and dress imitative of Powell.

Edwards, in the mean time, had written letters to Joshua Clibborn and to Edward Corrie, New York. Mr. Clibborn declined the Colonel's overture; but Mr. Corrie drew his check on the Bank of America for twenty-five thousand dollars; and obtaining the sum in \$1,000 and \$500 notes on this institution, enclosed them in a letter to "John P. Caldwell," with explanation and apologies for unavoidable delay.

Our rogue then went to Washington; saw Powell, and observed how his style of dress and appearance had not varied. He passed from thence, *via* Philadelphia, to New York, with a view to turn all his gains into different funds—which he accomplished; but he did not destroy the false stamps, with which he had made the forged post-marks on the spurious letters, the colored inks connected with them, nor the shot-bag marked "J. & Lee."

Powell had come on to New York, having been made the bearer of the commission of Mr. Everett to the Court of St. James and made preparations to go to England in the steamer of the twenty fifth of September.

In the mean time, Messrs. Maunsell, White & Co. had received from Brown, Brothers & Co. the two drafts on them for \$13,000 each in the name of their pretended friend John P. Caldwell and also the order for the cotton alleged to be in their hands from his estate in Arkansas. Maunsell, White & Co. immediately wrote back to Brown, Brothers & Co., returning them the two drafts, regularly protested for non-acceptance and expressing a hope that those gentlemen might be enabled to apprehend the rascal who had defrauded them and recover the amount in his possession.

"Twenty thousand dollars reward for the arrest of the great forger."

About the time when the forgery thus came to be known Powell was about to go to Boston and take steamer with his dispatches; and, indeed, Monroe Edwards thought he was gone—some slight accident to the vessel had detained her, so he wrote an anonymous letter to Messrs. Brown, Brothers & Co., in a disguised hand, informing them that Alexander Powell, who *had* embarked at Boston and sailed in the steamer for England was the man for whom they were in search. Hard upon this note and in connection with the news of the unexpected detention of the steamer, came another letter, in the same hand, speaking more doubtfully in relation to Powell and urging circumspection before charging Powell with the crime, as he was of good family and had the best connections.

There was something significant in the change of tone of the writer, now it appeared that the subject of the communication was actually within reach again. Officers apprehended Powell on the very morning when the delayed vessel was about to start; but on finding that he was the bearer of dispatches, they deemed it well to show him the anonymous letters wherein he was charged. Whereupon Powell, feeling certain of the writer, said:

"Do you wish to know who the forger is?"

"We do."

"Well, then, it is Monroe Edwards."

He was arrested at Mrs. Phillips's in Philadelphia, where his trunks also were secured. On arriving at the recorder's office, his first question was, as to who were the most eminent lawyers in Philadelphia; and on being told, he chose Mr. Dallas, afterwards Vice-President of the United States. Subsequently his trunks were opened, and there were \$500 in gold which he had tried to invest, through Child, for Kitty Clover and the bulk of the money, amounting in all to \$48,600. And there was the bag marked "J. & Lee;" and the fraudulent post-office stamps and letters, forming the combinations "New Orleans, La.," "Ang.," and "Paid" and the colored inks with which they had been charged. And he was identified as the party, John P. Caldwell, who had negotiated and got cash for the drafts sent to him by Brown, Brothers & Co.

Monroe Edwards was given up to the New York authorities and lodged in the prison known as the Tombs.

An *alibi*, under the circumstances, seemed an absurdity; and yet Edwards sent for Child, hinted at a sum of twelve hundred dollars, and in connection with it, declared how he meant to set it up by his assistance, showing that although witnesses would be summoned and declare he was in Baltimore on the 31st of August, and in Richmond on the 2d of September; yet he, with Child's aid, would be able to prove he was in New York between the 28th of August and the 4th of September. With this view, the register-books of the Northern and Waverley Hotels in New York were to be tampered with. Child went to the Northern Hotel and managed to enter the name "Edwards, La.," upon the register under the date of 30th of August; and he made a similar one on the register of the Waverley under 31st of August, the day on which brokers would testify he was in Baltimore, some two hundred miles away, cashing New York drafts. And Child also went to Albany, to insert in an hotel register a spurious entry to offset the date on which it might yet be discovered that the forger had effected his exchanges in New York. This was effected on the book at the American Hotel. Child also was induced to go to an hotel at

Fredericksburg, Virginia, and insert there an entry which would be incompatible with the forger's operations in Richmond at the same date.

One of the firm of Mannsell, White & Co. had arrived in New York with the Hugh S. Hill letter. Thus it was the prosecuting District-Attorney saw that Hugh S. Hill had been merely the *avant alias* of John P. Caldwell, and that both these were embodied in Colonel Monroe Edwards, now in cell 64, Tombs-prison, New York.

Then Winfree was found and among his letters from Edwards, under his own name, was the one with the word "fiew," while the prosecuting officer was in possession of the spurious letter received by Brown, Brothers & Co. as from Maunsell, White & Co. (dated New Orleans, 10th August, 1841), in which was, "Mr. Caldwell and his family are amongst the very *fiew* planters of this State who are entirely free from debt."

Mr. Robert Emmet, of the New York Bar, was retained by the prisoner. And here we have to mention a remarkable act of forgery in the direction of his very counsel. Edwards had informed Mr. Emmet that he was possessed of large amounts of property in Texas, some of which he had ordered to be sold to meet the contingent costs of his defence. He drew a letter, purporting to come from the cashier of a bank in New Orleans, on Mr. Emmet, informing him of the deposit, on that day, of fifteen hundred dollars to the credit of his client, which notification he, the cashier, thought proper to send through him, the counsel, as he had seen in the newspapers that Mr. Edwards was in prison. This letter was sealed and addressed to Robert Emmet, Esq., New York, and received finally the circular post-marked "New Orleans, La.," from a stamp which Edwards had made with his penknife. How it and the other forged letters were run through the New York post-office remains unexplained. Mr. Emmet took the letter to his client in prison, showing it to him as a sign of pleasant tidings.

Commissions were issued to St. Thomas and Havana to take the testimony of "Charles F. Johnson;" but these were returned with a certificate that no such man was to be found. Edwards then

made up a letter, dated at Havana, as from Charles F. Johnson, to himself, and handed it to his counsel; and the latter moved for and obtained another commission.

Monroe Edwards had a brother, Ashmore Edwards, who, without giving his right name, got an interview with the former; and afterwards quietly made his way to Havana, and there represented himself to be Charles F. Johnson, and under that cognomen, before Mr. Calhoun, U. S. Consul, acting as Commissioner, gave testimony under the commission. The prisoner had no knowledge that his brother was discovered as the man testifying, yet private communication was sent to the prosecuting officer of the fact.

The brother had also gone to Washington and secured the professional services of Mr. J. J. Crittenden, then Senator, afterwards Attorney-General, and Mr. Thomas Marshall, representative in Congress from the same State, and to these, with Mr. Emmet, were added Mr. William M. Evarts of the New York Bar, while the District-Attorney, Mr. James R. Whiting, had associated with him Mr. George F. Allen (a relative of Mr. Brown, of the firm of Brown, Brothers & Co.), Mr. Ogden Hoffman, Mr. William M. Price, of the New York Bar, and Mr. Hart, of Philadelphia.

Eight months elapsed before Monroe Edwards was brought to trial in the matter of Brown, Brothers & Co. The testimony clearly identified him with the crime. Recorder Vaux, of Philadelphia, was useful as an expert in regard to identifying the character of handwriting and mail stamps upon letters; and he turned the Emmet letter against the prisoner. Mr. Emmet, believing in its authenticity, showed Mr. Vaux the superscription and asked if he could say whose handwriting that was? The witness instantly answered, he had no doubt it was in the handwriting of Monroe Edwards.

"Do you feel certain of that, Mr. Vaux?"

"Yes, sir."

"As certain as you are in relation to the handwriting of the letters which you have previously identified as having been written by the prisoner?"

"Yes."

"You have no hesitation, then, in swearing positively that you believe the letter you hold in your hand to have been written by Monroe Edwards?"

"Not the least."

"That will do, sir."

"Let us see the letter," exclaimed the prosecuting counsel.

"It is your privilege, gentlemen," said Mr. Emmet, "but I doubt if it will be to your profit. The letter is directed to myself, and is written by the cashier of the Orleans Bank, informing me of a sum of money deposited in that institution to the credit of the prisoner. Mr. Vaux's evidence in relation to it will test the value of his testimony in relation to other equally important points."

Mr. Vaux pressed to the table of the prosecution, and ran his eye carefully over the letter, and then reached to a tin box which was in the keeping of the prosecution, and contained genuine New Orleans post-office stamps: "I may be willing to submit my testimony to your test, Mr. Emmet," said Mr. Vaux; whereupon Mr. Hoffman examined him:

"You have said, Mr. Vaux, you believe the letter which you now hold in your hand was written by the same hand that wrote the Caldwell forgeries, and that such hand was Monroe Edwards's: do you still retain that opinion?"

"I do."

"On what ground?"

"Because it is a fellow of the same character, as well in appearance as in device. It is a forgery. Probably only intended to impose upon his counsel, but now, by its unadvised introduction, made to impose upon himself."

The true New Orleans stamps were here shown to be at variance with the counterfeit post-mark, and the character of the writing was also proved, by comparison with the letters obtained by Winfree, in the forger's undoubted hand.

The defence seem to have been allowed to introduce almost every thing. There was a letter from Monroe Edwards to Charles F. Johnson, which showed seeming large means owned by the former. Miss Phillips was examined under a commission, in consequence of

her refusal to attend personally. She, of course, testified as to the large amount displayed when he made an offer of marriage. All this went to prove his general means, and therefore, would go a great way to account for the large funds found in his possession. The barkeeper of the Northern Hotel, New York, produced the register of the hotel, and showed the names of "Belcher and Edwards, La.," on one line. The room was a double-bedded one. The entry was discolored by tobacco, which the witness accounted for by saying the book might have fallen on the floor. On cross-examination, he said the register was accessible to everybody; the name of Belcher had been in lead-pencil originally and been written over by himself; but the words "and Edwards" were not in his handwriting. The fact was, that when Child went to the Northern Hotel to insert the name of Edwards, he found the page under the date of August 30th full, and had been obliged to connect it with another name by extending the line. He had acquainted the prosecution of this fact, but they had obtained possession of it too late to hunt Mr. Belcher up. Then came the barkeeper of the Waverley Hotel. Attached to the entry of "Mr. Edwards, La.," was the letter "D," for dinner, which indicated that the arrival had been in the daytime. On cross-examination, the witness could not say whether the entry had been on the book at the time indicated, but there certainly was one singular contradiction about it; for though the name of Edwards, La., was marked "D," for dinner, it was inserted at the bottom of the page, and came after the names of the persons who were marked "L," for lodging; which showed that they who were entered before him arrived in a late train, too late for tea. Evidence was given to show a remarkable similarity between the prisoner and other persons—especially between Powell and him. The word "flew" in the letters was well worked in through questions put to the witnesses for the defence. We deem it unnecessary to go further with the testimony.

The summing-up of Mr. Marshall is not to be forgotten, as it commenced with a violent attack on General James Watson Webb, then editor of the New York Courier and Enquirer, wherein the

counsel had been severely commented on for having left his seat in Congress to advocate the cause of the most notorious swindler in the country. Colonel Webb was in court and the advocate studiously turned and faced him while he launched his attack. This led to a challenge and duel between them, wherein the Colonel was severely wounded in the thigh; and he was afterwards indicted, found guilty of sending the challenge and suffered a brief imprisonment.

Mr. Hoffman pressed strongly the word "fiew" in the letters. But before he commenced his argument, or had even entered court with that view, he had gone, at an early hour, to his office and discovered a note upon his desk. It was written in a female hand and signed with a woman's name. It commenced by stating that the writer, knowing him to be a liberal and courteous gentleman, would take the liberty of asking him a question in relation to a little difficulty which she had gotten into and which, according to his answer, would create or not a necessity for an employment of his professional services. She had a little son about thirteen years of age and she had bought him a little *poney* to ride. After she had had the *poney* for about three weeks and her son had got very much attached to it, a female neighbor of hers, who had seen the *poney*, had borrowed the *poney* for her son to ride. Not wishing to refuse her neighbor, the writer had lent the *poney*; but now, after the *poney* had been in the borrower's use for several days, she found it impossible to get the *poney* back. She wished to know of Mr. Hoffman if there were no measures of law by which she could recover the *poney* and obtain such redress for the detention of the *poney* as the circumstances of the case would seem to warrant. The writer added that she did not care so much for the value of the *poney* as for the manner in which the *poney* had been gotten from her and wouldn't Mr. Hoffman be so kind as just to leave a line on his desk before going into court (which she would send for), letting her know what she must do to get her *poney* back?

Previously to the commencement of proceedings this morning, Mr. Hoffman, while engaged in conversation with his associates,

remarked: "By the way, Whiting, 'I received a very singular note this morning."

"About what?"

"About a p-o-n-e-y, pony," said Hoffman.

"Hush!" said Whiting, "I have also received one."

"And so have I," observed the presiding judge, William Kent, near whom these gentlemen had been standing and, at the same time, drawing the note from his pocket. Whiting did the same with the one he had received; they were compared and proved to correspond almost exactly with each other and also with the description which Mr. Hoffman gave of the one he had left at his office.

"Ah, I see the fellow's object now," remarked Hoffman. "These continual repetitions of the word *poney* were to fix that arbitrary mode of spelling temporarily upon our minds, so that in writing our replies, we should insensibly fall into the same combination. His intention was, then, to use our letters to defend the imputations on his own orthography from any connection with that of Caldwell; for you will perceive, if he could have shown that three gentlemen, known for their scholarship and intelligence, had fallen into an error in the misspelling of a word so common as the word pony, there would be but little force in the coincidence of 'fiew' between two other persons."

This reminds us of our school-days in England; when a boy would say the following: "My pony eats plums, damsons and bul-lace out of a pewter basin," and challenge another to write every word of it correctly. The pony would often carry the additional weight of *e*; the plum be improperly plumbed; and the round basin get a round *o* and lose its *i*—to say nothing of the pewter being still further compounded and the damsons be, in their commencement, *damned*.

On the seventh day, the jury brought in a verdict of guilty against Monroe Edwards.

Edwards was afterwards arraigned on the Corrie matter and a like verdict rendered.

The false life of this man was apparent in his course towards

the very counsel who were trying to save him from a prison. It is well understood that he failed in satisfying them for their services. We have already seen how he mystified one of his advocates, Mr. Emmet, and, at the same time, injured his own chances. We have applied to another of his counsel, who responds thus:

"He was ingenious and fertile in subterfuges. His last one, with me, was to pretend that his pocket had been picked as he was coming into court and thus my fee abstracted. In proof, he pointed me to his coat pocket, very artistically cut by an adept, and which he pretended to have just discovered. I have seen no *chevalier d'industrie* that could compare with Monroe Edwards."

Some of our unprofessional readers, in thus finding how the lawyers were feeless, may be inclined to sing from an old English song—

"But gossips, you know, have a saying in store,
He who matches a lawyer has only one more."

Edwards was consigned to the State prison at Sing Sing for ten years, being five years on each conviction.

He was first put under the tuition of an old convict to learn carpet weaving; but, after a year, transferred to the shoe-shop.

While in this department, he succeeded in interesting one of the sub-contractors, named Campbell, and persuaded him he still owned large tracts of valuable Texas lands, on which he could realize immense sums if his liberty could only be procured. Insensibly corrupted by these temptations, the agent told Edwards he would assist him to escape. The forger, upon this, from vague suggestions, took the arrangement of the matter directly into his hands and ordered the agent to procure a box, such as was used to convey manufactured goods from prison, and to place within it sufficient biscuit and water to answer the demands of hunger for several days. The box was to have a cover which would button inside, so as to prevent the danger of a casual discovery. Edwards was then to write a note as follows:

"When this note is found, Monroe Edwards will be no more."

This note was to be intrusted to a friendly convict, who was to

take it, with the cap of Edwards, to the wharf of the prison on the river; and as soon as he caught a signal from the agent that the forger was concealed in the box, he was to deposit the cap, with the note attached to its string-piece, and make outcry that a man had thrown himself into the water.

All this being arranged, Edwards arose from his shoemaker's bench on the appointed day, and giving the usual signal of an up-lifted finger, as if desirous of going to the yard, he passed out of the shop, sprang into the box and closed it. In the next moment the signal was given by the agent, and the confederate convict came bawling from the river with the alarm. The keepers, summoning the convicts who were disengaged, rushed to the wharf. The cap and the note confirmed the first idea that the wretched man had plunged into the river, and rakes were immediately procured to recover the body. These efforts continued throughout the day; but one or two of the old keepers, more conversant with the tricks of convicts, shook their heads with profound professional mistrust, and commenced a search throughout the prison. The efforts were resumed the next day with increased activity; and, after every nook and cranny of the buildings had been thoroughly examined, suspicion fell upon the box which had been passed so many times. The lid was burst off and there lay the missing body of the forger—not dead, according to the terms of his touching valedictory, but breathing hard with apprehension and haggard from excessive agitation.

For this natural attempt to gain his liberty, he was unnaturally and, as we insist, illegally punished by receiving fifty lashes with the cat-o'-nine-tails, leaving an impress of four hundred and fifty stripes upon his quivering flesh.

Here was a first step taken towards an escape; but the law has no punishment for it. And even when a prisoner has really escaped and been then caught, the law does not allow keepers to punish. A court may increase the number of years of imprisonment; but even a court cannot award the lashing of the bare back with a cat-o'-nine-tails for an escape.

"We passed an hour," wrote L. Gaylord Clark in 1849, "in

the Sing Sing State prison, the other day; and while regarding with irresistible sympathy the wretched inmates, we could not help thinking how little, after all, of the actual suffering of imprisonment is apparent to the visitor. The ceaseless toil, the coarse fare, the solemn silence, the averted look, the yellow-white pallor of the convict, his narrow cell, with its scanty furniture, his hard couch—these, indeed, are visible to the naked eye. Yet do but think of the demon Thought, that must eat up his heart during the long and inconceivably dismal hours which he passes there in darkness, in silence and alone! Think of the tortures he must endure from the ravages of that pleasantest friend but most terrible enemy, Imagination. Oh, the height, the depth, the length and breadth of a sensitive captive's sorrow! As we came away from the gloomy scene, we passed, on a hill, within the domain of the guard, the prison potter's-field, where lie, undistinguished by headstone or any other mark, the bones of those who had little else to lay there when their life of suffering was ended. There sleeps Monroe Edwards, whose downward fate we had marked in successive years. We first saw him when on his trial—a handsome, well-dressed, black-whiskered, seemingly self-possessed person, with the thin varnish of a gentleman and an effrontery that nothing could daunt. Again we saw him while holding court with courtezans at the door of his cell at 'The Tombs,' the day before he left for Sing Sing; clad in his morning-gown, with luxurious whiskers and the manners of a pseudo-prince receiving the honors of sham subjects. The next time we saw him, he was clad in coarsest felon-stripe; his head was sheared to the skull; his whiskers were no more; a dark frown was on his brow; his cheeks were pale and his lips were compressed with an expression of remorse, rage and despair. Never shall we forget that look! He had a little while before been endeavoring to escape and had been punished by fifty lashes with a cat-o'-nine-tails, four hundred and fifty stripes on the naked back! Once again we saw him, after the lapse of many months. Time and suffering had done their work upon him. His once erect frame was bowed; his head was quite bald at the top and its scanty bordering hair had become

gray. And thus he gradually declined to his melancholy 'west of life,' until he reached his last hour—dying in an agony of terror—gnawing his emaciated fingers, to convince himself that he was still living, that the appalling change from life to death had not yet actually taken place. And now he sleeps in a felon's grave, with no record of his name or fate. Is not the way of the transgressor hard?"—(Vol. 30 Knickerbocker Magazine, New York, 361.)

THE GREEK FRIGATES AND HENRY DWIGHT SEDGWICK.

Of Henry Dwight Sedgwick, the second son of the late Judge Theodore Sedgwick of Massachusetts, it has been prettily and truthfully said: "Though he lived in the midst of society, surrounded by the iniquity that abounds, he was unspotted from the world. Pleasure did not catch him in her toils, nor avarice sully his hands with the gains of rapacity. All the days of his active life, innocence found in him a defender, truth a champion, religion a true worshipper and talent and learning a sincere admirer and liberal supporter against the enmity, apathy and prejudices of other men." Mr. Henry Dwight Sedgwick practised for several years in New York, associated with his brother Robert; and although not seen much in the turmoil of the courts, his great usefulness and breadth of legal mind were apparent. His father, the judge, paid him a compliment, in using an argument of his composition as his opinion in the highly important case of *Greenwood v. Curtis*, 6 *Massachusetts Rep.*, 358. The point there, touched the sympathies of Henry Sedgwick. It was an action by the plaintiff, a resident of a Southern State, to recover on a contract which had been made on the coast of Africa, between his agent and the defendant, the latter then resident there as proprietor of several factories of the slave-trade, *for the delivery of a number of slaves in exchange for a cargo of goods*. The defendant had but partially fulfilled the contract, having violated his engagement to deliver a balance of slaves remaining due on a settlement of the account current between the two. The main question in the case was, the ability

of the plaintiff to maintain his action, on a contract of such a nature, in the courts of Massachusetts. The case was, also, considerably complicated by other points arising out of the special facts of the transaction. On one of these, the court felt itself able to sustain the action, and give judgment for the plaintiff, without throwing the stress of the case fully on that essential point, the *immorality* of the contract; although incidentally and with very weak reasoning, it did pronounce against the leading argument of the defence, viz., that the contract was essentially vitiated by its immorality. Judge Sedgwick was absent from the bench at the time of rendering the judgment, engaged on his western circuit. He disapproved, however, of the opinion of the court, and caused to be added to the regular report of the case as his own dissenting opinion, the production we have referred to, an emanation from the mind of his son Henry, then a student of law—the judge having been so forcibly struck, in the course of a warm discussion of the subject with his son with the large liberality of his views, the soundness of his application of the principles of law, and the acute cogency of his reasoning, as to depute to the latter the task of preparing his opinion. We strongly advise our brothers who have not come across the case, to peruse from it the above dissenting opinion. There will be found in it a lucid exposition of reported cases on the point of property in a negro slave and a fine tone of thought in connection with the inalienability of the liberty of man.

Another scene in his professional life had relation to the celebrated controversy of the Greek frigates in 1826. The Greeks, at that period struggling, with seeming hopelessness of success, for existence as a nation, had contracted a loan of £2,000,000 in London. From these funds their deputies in New York contracted with two mercantile houses there for the construction of two frigates to be dispatched as quickly as possible to the scene of action. The confidence reposed by the unfortunate Greeks in the professed philanthropy and reputed commercial honor of agents proved in the sequel disgracefully abused. It became necessary for a special agent, Mr. Alexander Contostavlos, to be sent out to New York to protect their interests, and sell one of the vessels in order to

obtain the means for the completion and equipment of the other. Contostalvos cast himself on Messrs. Henry D. and Robert Sedgwick and Messrs. Duer and Robinson. What turned out to be a most vexatious arbitration extended over many months. The remaining vessel was in danger of seizure and confiscation by the United States Government, the whole transaction being directly contrary to the laws of the United States, though the deputies had made it an express condition of the order for their construction that it should only be undertaken if in accordance with those laws. It was found extremely difficult to obtain possession of the frigate out of the hands of the arbitrators; and it was not without a display of spirited resolution, not unattended with personal danger, that Mr. Henry Sedgwick—the leading counsel in the business—was able to obtain the possession and transfer it to the sacred cause for which it was designed. Into this affair he threw his whole soul. It excluded almost all other business—all other thought—and kept the powers of his mind and the excitable sensibilities of his heart in a constant state of tension, so highly wrought, that its eventual effects were most prejudicial—most fatal indeed—to both the mental and physical health of the devoted advocate. The bright and keen temper of the blade wore through its fragile sheath—and Henry Sedgwick was too soon perceived to have become a martyr to the noblest of causes. (New York Democratic Review for 1840.)

It is a pleasant thing to remember that Mr. Henry D. Sedgwick took an early and warm interest in the literary talents of Bryant. It was chiefly under the influence of his persuasions that Mr. Bryant was induced to remove to New York from the obscurity of the uncongenial practice of a country lawyer in a neighboring village to Stockbridge, and through his means that he first became acquainted with the Evening Post.

THE CASE OF "THE CAROLINE" AND JUDGE ESEK COWEN'S OPINION.

In the year 1837, Canada was politically restless; and a body of Americans, led by Rensselaer Van Rensselaer, proceeded from

the State of New York and took hostile possession of Navy Island in the Niagara River, lying within Upper Canada; and, in a war-like manner, discharged caannon upon British subjects at Chippewa. It was done to make an invasion and révolution and sever this province from Great Britain. To repel, British troops assembled at Chippewa, by authority of the Provincial Government. A mutual heavy cannonading, at times, took place. A steamboat, called The Caroline, proceeded from Black Rock or Buffalo and landed military stores on Navy Island and plied between the latter and Schlosser, in the State of New York. An expedition of small armed boats, with armed men, was fitted out at Chippewa, by direction of Colonel Allan McNab, who was lawfully in command, with orders to take The Caroline by force, wherever found, and bring her in or destroy her. She was observed fastened to the dock at Schlosser, where a hostile attack, in the middle of the night, was made upon her. The act was a bold one;—night—Navy Island with its cannon pointing just above the line of these boats—the cataract of Niagara sounding below with the small boats upon its very slide—a swift current—one rod of stretch too much had plunged the adventurers into the abyss of the falls. The Caroline was boarded and burnt to the water's edge. A man employed on board, named Amos Durfee, was killed, by being shot through the head.

Alexander McLeod, who, in some subordinate capacity, was with or hanging on to the British troops and, according to depositions, among those who participated in the attack on The Caroline, was arrested in the State of New York on the charge of having killed Durfee. This he denied, and reasonably proved an *alibi*, although some one swore he heard him declare he had done the deed and at the same time exhibited a pistol, which, as he was said to have averred, had Durfee's blood still upon it. And he had made this "Westminster-Abbey" declaration: "If you miss your aim, a glorious winding-sheet awaits you below the cataract."

A grand-jury found a true bill against Alexander McLeod for the murder of Amos Durfee.

The British Government, through their minister, Mr. Fox, made

a demand on the Government of the United States, for the immediate release of McLeod, on these grounds: that the transaction, on account of which Mr. McLeod had been arrested and was to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by Her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defence of Her Majesty's territories and for the protection of her subjects; and that, consequently, those subjects who engaged in that transaction were performing an act of public duty, for which they could not be made personally and individually answerable to the laws and tribunals of any foreign country.

The indictment was removed into the Supreme Court of the State of New York; and, subsequently, a writ of *habeas corpus* was allowed by Judge Cowen. A motion was made before him to discharge McLeod. Judge Cowen was a consummate common-law lawyer; but his mind was contractile, and had not the power to expand to such an extent as to take in, enjoy and retain the law of the world, as international law is sometimes called. His honor held, that a British subject, who was charged to have belonged to the expedition, was liable to the criminal courts of the State of New York, and could be held for trial on an indictment for arson in the destruction of the boat and for the murder of Duffee, notwithstanding that the act of the colonial authorities had been recognized and approved by Great Britain. The judge remanded the prisoner to take his trial. (*The People v. McLeod*, 25 *Wendell's Reports*; S. C., 1 *Hill's Reports*, 378.)

The excitement against McLeod was intense in the upper tier of counties of New York.

Judge Philo Gridley presided at the trial. There was an array of counsel; those for the people being Willis Hall, as attorney-general, Jonathan L. Woods, Timothy Jenkins and Seth C. Hawley—while the prisoner had Joshua A. Spencer, Hiram Gardner and Alvin C. Bradley. We do not, however, find any thing of a high grade in the working of witnesses, or throughout the speeches to the jury. In the trial, as it appears in Gould's *Stenographer Re-*

ports, Mr. Spencer is made to complain that the prosecution had kept their side of the case as religiously concealed as though they had enclosed it "in the *hecatombs* of Egypt." But the judge looks well. He thus commenced his address to the jury:

"Gentlemen of the jury: I congratulate you on at length having arrived at the closing scene of this long-protracted trial.

"After six entire days have been consumed in listening to the evidence, and one day and a half in listening to the arguments of counsel, you have arrived at that period of your labors, when you are to enter upon the last solemn duty, which, in the allotment of Providence, you have to perform.

"I congratulate you, also, upon the auspicious circumstances under which you approach the performance of this duty. It is true, as we are all aware, that a deep and pervading interest has been felt in the issue of this trial throughout this entire land: and we know that a portion of the press, from the earliest moment when the controversy commenced till this hour, has teemed with inflammatory appeals.

"We have heard of the prevalence of popular commotion in various parts of the country, and of one popular outbreak in the county where this indictment originated; setting public justice at defiance, and setting at defiance the ministers of public justice.

"Though these disturbances may prevail elsewhere, so far as my knowledge extends, they have not entered this solemn temple of justice. If the waves of excited popular commotion, originating elsewhere, have swept over other quarters, they have been arrested before they reached the portals of this building, consecrated as it is to the faithful administration of the law, to which the prisoner and the people alike appeal.

"We have beheld, as attentive auditors during the progress of this trial, loyal subjects of the British Government who were in arms during the recent troubles for the protection of their soil; and on the other hand, we have had the presence of more than one of those distinguished organs and actors connected with the recent unsuccessful and abortive attempts at a revolution in the Canadian Provinces. Yet, although these individuals, as well as

others who have been present, must have been deeply interested auditors and spectators of what has occurred, not a single murmur has been heard—not a single ebullition of excited feeling has escaped. All has been quietness and good order, and a signal proof has been given, that here is a spot where pure and impartial justice can be administered, and that here, if nowhere else, the law is allowed to be paramount and supreme, and all bow before its sovereign behests.

“In approaching the great question upon which you are to pass, allow me to add one more prefatory remark. In order fairly to appreciate this question, it is necessary that you keep your minds free from the consideration of other questions which have nothing to do with this. The counsel who have addressed you on the one side and on the other, have presented such arguments and such topics as they deemed essential to further the interest of the parties which they represent.

“But the tribunal which tries, has also its duties to perform, altogether different from those incumbent on the advocates intrusted with the interests of those who are placed at its bar.”

He then went, with exceeding care and fairness, through all the evidence; and closed thus:

“Now my duty is performed. Your duty, and it is the highest duty which you can ever be called to discharge, the most solemn duty which your country ever reposes in her citizens, your duty is about to commence. You are to take this subject into your deliberate consideration, weigh and decide upon every portion of it; call into exercise your best powers of judgment; free your minds from bias, if any exist: you are to approach the consideration of this question, looking at it through the testimony which you have heard upon the stand and that alone; discarding all considerations which have been held out by counsel, all rumors which may have reached your ears; every thing but the polar star of looking to the evidence to ascertain what is the truth. When you come to your decision, and determine where the truth is, let it be with an independence that shall do honor to a jury—with that impartiality which your country expects at your hands. With a

single eye to the demands of justice, pronounce your verdict: and when you have pronounced it in the best exercise of your judgment and of this great duty which you have to perform, I trust that all those who have witnessed this trial and the manner in which it has been conducted—all those who have heard the able arguments which have been submitted by counsel, and the patience with which you have heard and drunk in the evidence, as portion after portion of it has been unfolded before you—that all those who have seen your anxious endeavors to arrive at the truth, will be satisfied. If you shall believe that this man is guilty of murder, then, fearless of consequences, whatever those consequences may be—though they shall wrap your country in a flame of war—whatever the result, look with a single eye to truth, and a hand firm to duty; look to the God of justice, and say whether the prisoner be guilty or not. If he has successfully met this charge and defended himself against it, then there is another duty to perform, irrespective of any rumors or charges; irrespective of any considerations which may be held out to you, or which may have entered your minds or exercised an influence over you—with the same fearless intrepidity pronounce that he is not guilty. Now, gentlemen, I commit this great case, with its solemn duties, and the rights of your country to you; and may the God of all justice and truth preside over your deliberations, and may the verdict which you render be in accordance with the foundations of His throne and His government.”*

The jury were evidently not imbued with sectional feeling, for, after an absence of only half an hour, they pronounced their verdict of *Not guilty*.

The views which Judge Cowen had laid down, were much ques-

* Judge Gridley died on the 16th of August, 1864. The Court of Appeals of the State of New York directed an entry to be made in the minutes of the court of their expression of its sense “of the great value to the people of the State of New York of his judicial services, of his eminent learning, the justice and discrimination of his judgment and the purity and uprightness of his character.”—32 *N. Y. Reports* (3 *Tiffany*) 9.

tioned among lawyers; and Judge Daniel B. Tallmadge, of the Superior Court of the City of New York, published a review of the opinion of the former, in which he insisted that the outrage on *The Caroline* was not a violation by individuals of our municipal law, but an attack by a foreign power on the sovereignty of the nation; and to demand redress for the wrong and to judge of the nature and extent of the satisfaction which should be required was, therefore, the exclusive province of the General Government. See this review in an appendix to the 26th volume of *Wendell's Reports* (p. 663).

Judge Tallmadge received from men on the bench and brother lawyers high compliments and endorsements; among them, the following from Chancellor Kent:

"NEW YORK, November 6, 1841.

"DEAR SIR—I thank you for your review of the opinion of Judge Cowen in the case of *McLeod*. It is very ably executed. It is clear, precise, neat, logical, accurate and entirely conclusive upon every point. I have read it with great satisfaction; and I should have been proud if I had been the author of it.

"Yours, very respectfully,

"JAMES KENT.

"HON. DANIEL B. TALLMADGE."

Mr. Joshua A. Spencer, among others, was opposed to the doctrine which had been laid down by Judge Cowen. In his address to the jury, he had held this language:

"I desire it to be understood here, in this court-house and by this audience, as well as in this nation and throughout Christendom, for our doings interest all Christendom, that I do, with all due respect to the Supreme Court of the State of New York, protest against the doctrine which has been promulgated as the law of the land. It is not the law of nations; it is not the law of reason; and I, for one, never will submit to it so long as it may be necessary to contend against it for the safety of *McLeod*."

Judge Tallmadge, however, did not enjoy compliments without question. The *Democratic Review* for May, 1842, severely handled his honor's *brochure*; and full extracts, "to direct attention

to some of the numerous misrepresentations with which the pamphlet abounds," appear in an appendix to the third volume of Hill's Reports, where also, is an able disquisition on the writ of *habeas corpus*.

At this late day, it may not be considered a breach of professional duty for the author of this work to say, he was honored by a communication from Mr. Fox, the British Minister, wherein it appeared Mr. Daniel Webster, then Secretary of State, assured the former that if the jury should find McLeod guilty, the case would be carried to the United States Supreme Court by writ of error, coupled with such action thereon as should cause the prisoner to be liberated and leaving The Caroline a matter entirely between the two Governments. Mr. Fox, however, adding his wish for an opinion, as to there being law through which the case could, in such an event, certainly get into the United States Supreme Court. He felt the assurances he had received from Mr. Webster were those of a Senator, and he could not directly question his grounds as a lawyer. Mr. Fox desired to feel assured of McLeod's position under every emergency.

The author could find nothing in Constitution or United States Statute which authorized the issuing of any process to carry such a case into the United States Supreme Court; and, gave an opinion accordingly. It is believed that Mr. Webster afterwards found he had given an assurance which he would have had a difficulty in carrying out: for, he thereafter drafted and got an act passed in Congress in August, 1842 (McLeod was discharged in October, 1841), empowering the Justices of the Supreme Court to grant writs of *habeas corpus* when subjects of foreign States are in custody under United States or State process.—See 5 *U. S. Statutes at Large*, p. 539.

Governor Seward had given the Assembly of the State to understand that, under no circumstances, would any arrangement or proceedings be entered into or permitted the effect of which might be to compromit, in the least degree, the rights, dignity or honor of the State of New York.

So that, if McLeod had been condemned and his case could not—

and it could not—have been moved into the Supreme Court of the United States—he would, in all human probability, have been executed. In that event, a war between the United States and Great Britain would have been inevitable.

Rensselaer Van Rensselaer, who had set this expedition on foot, was indicted for it, found guilty, and subsequently pardoned by the President.

McLeod, in a letter of the 11th of February, 1841, to the editor of the Journal of Commerce, showed that he was not of the party which attacked and destroyed *The Caroline*.

Justice Cowen was a self-made man, the whole amount of time which he passed in a common school or institution of learning did not exceed six months. Without wealth, without even the ordinary facilities which the humble youth of our land now have, and without influential friends or other factitious aids, by personal application and industry, by untiring zeal and energy and with a necessity for the greatest economy, Mr. Cowen, while yet a young man, became a ripe and varied student and for a great period of his life he had the reputation of being one of the most finished and accomplished scholars of the State.

He was abstemious and most untiring in his work and duties. On a circuit he would open court at eight in the morning and sit until twelve; then take a short adjournment and smoke a pipe of strong tobacco and drink a cup of strong tea; and then go in and sit again until three; when he would have another short adjournment and again take a like pipe of tobacco and a like cup of green tea; and then go in again and sit until eight at night; then, again, adjourn and go at a third pipe and a third cup; and go in again—and he was known to have called on cases at twelve o'clock at night and even at a later hour.

There was a case before him in which eminent counsel were employed and much argument as to whether a certain cooking-stove was a fixture. The judge seemed hardly to know what decision to make, and he determined to put the case to his wife and to decide according to her notion. Having stated it, the excellent lady interrogatively said:

“ But, Judge, how does it *bake* ?”

The judge said he understood it baked exceedingly well.

“ Then,” said his lady, “ it ought to be a *fixturé*: it’s a fixture, Judge.”

And so the judge decided. Thus a woman out of court, who knew none of the niceties of the case, decided where counsel had battled and the judge doubted.

Chancellor Kent was said to sometimes consult “ Betsey” and decide according to the conclusions of his excellent wife.

Judge Cowen, when about to take a journey of recreation, used to put into his travelling trunk a volume or two of Reports, by way of light reading.

JOHN CALDWELL COLT.

More ingenuity is often exhibited in an attempt to hide a crime, than is used in its performance; and yet, this ingenuity may turn out to be a very means of discovering the wrong and its perpetrator.

John Caldwell Colt had a room or office on the second floor of a granite building at the corner of Chambers Street and Broadway, New York—where Delmonico has his restaurant. Colt had issued a work on book-keeping and, at times, lectured on the subject.

Samuel Adams, a printer in the same city, performed work for Colt; and between three and four o’clock in the afternoon of Friday, the 17th of September, 1841, he had entered Colt’s office.

Samuel Adams was seen no more alive.

The ship Kalamazoo was lying at the foot of Maiden Lane (New York) “ up” for New Orleans. She had in her cargo, when police officers went on board, ordered her hatches to be opened and caused a large box, from amidst the cargo, to be brought on deck. On opening this box, a dead decomposing body was discovered. It had nothing on save a shirt. The neck was drawn down to the knees by a rope; salt was tightly packed round and then a portion of a canvas-awning wrapped about the whole; and,

also, in the box, were a black coat much torn, a neck-stock cut and smeared with blood on both sides, two pieces of matting and some oakum. The skull was fractured in several places. The body was identified as that of Samuel Adams.

The cause of searching the hold of the Kalamazoo for this box, was from suspicions given to the mayor. A box, directed to St. Louis, *via* New Orleans, had been seen in the entry of the granite building on the morning after Adams had gone to Colt's office. The latter had been seen to get it down stairs, and prior to this he was heard hammering and sawing in his room. The carman was traced who had taken it, on the same day, to the side of the vessel, Colt accompanying him. And on searching his office the remains of a shattered looking-glass were scattered on the floor; a hatchet with hammer head, was discovered under a lot of papers, over which a trunk had been placed, its handle newly scraped as if with a piece of broken glass, and the hatchet-side was covered with ink, while the wall was spotted with a like liquid, seemingly to copceal or obliterate other marks.

A coroner's inquest found that Samuel Adams was willfully murdered by John C. Colt.

About five months after his commitment, Colt was tried at the New York Oyer and Terminer, Judge William Kent, with two aldermen as associates, presiding. The case lasted nine days.

During its progress, his counsel, Messrs. John A. Morrill, Dudley Selden and Robert Emmet, complained to the court of articles in the newspapers of the day prejudicial to their client, some of which had reached the jury, especially matter contained in an "extra" of the New York Herald, which consisted of a wood-cut representing a naked man, and over it, "Samuel Adams, the printer, as his body appeared before it was cut up and salted."

Besides the facts before detailed, it was proved that the substance covered by the ink upon the hatchet and walls was blood. Also, that on the evening of Adams's disappearance Colt was heard in his room tearing something like cotton cloth, and there was the rattling of water as of some person scrubbing the floor, continually

putting cloth in water and wringing it; and, also, next morning, a noise of sawing and nailing.

Although the medical evidence conclusively showed that the general wounds in the skull might have been caused by the hatchet, there was a round hole at the back which Dr. Gilman could not, at first, reconcile to his mind as having been made by a hatchet. It seemed to him more like a bullet wound, although there was no discovery of a ball, or done with a nail. This caused the District-Attorney, Mr. James R. Whiting, who, in the prosecution, was assisted by Mr. James M. Smith, jr., to move that the skull of Adams should be produced in court by the coroner. It was opposed, but Judge Kent observed that however painful it was to have it exhibited, a court of justice must yield to such an application. The head was uncovered by the coroner and handed to Dr. Rogers, who was then on the witness-stand, amid general sensation, and Colt covering his face with his hands.

On the seventh day of the trial, Judge Kent read a letter from a member of the Bar, complaining that lawyers could not get into court, being excluded by the rabble—his honor taking exception to the word "rabble," declaring he recognized no such term: "there is people, not rabble." The newspapers somewhat took the judge to task for this, especially the *New World*, in its impression of July 30th, 1842.

It was not until the summing-up that the prisoner's counsel gave any version of the matter; and this Mr. Emmet then did by reading a statement made by Colt. Its substance will be found in one of his letters hereafter given. There was an insistment that the case came under excusable homicide. The jury brought in a verdict of willful murder.

After verdict, sentence was suspended for the purpose of obtaining the decision of the Supreme Court of the State upon certain questions raised on the trial. This having taken place (*The People vs. Colt*, 3 *Hill's Reports*, 432), and the proceedings remitted to the Oyer and Terminer, with directions to pass sentence, final judgment of death was given. Application was then made to a circuit judge for a writ of error, with a stay. This being denied,

a Supreme Court judge at chambers was approached, who, with the concurrence of his associates on the bench, also denied it. There was, then, a renewal of the same before the Chancellor, Walworth. His honor gave an opinion, ending with a refusal to allow a writ of error. There appears in this opinion, as it strikes us, something like an ostentation of deciding according to strict law and justice, looking neither to the right hand nor the left. We say this, because the fact of intimacy between a near relative of the prisoner and the Chancellor and calls of private friendship are unnecessarily put forth. A man holding a judicial position has two distinct characters, if not natures. As judge, justice, he has neither loves, affections, interests; while, as a private citizen, all these are of him and with him. In the latter, let him show himself through the humanities; but, in the former character, he is simply to expound, declare and carry out the law.

Chancellor Walworth: "No one not immediately acquainted with the condemned individual whose case I have been considering, can more deeply regret than I do the situation in which he is placed or sympathize more sincerely with his numerous connections. It has been my good fortune to be acquainted with many of them; and I know them to be among the most respectable in any community. With one of them, a lady who is a very near relative, I have been on terms of intimacy and friendship for more than thirty years. But in the administration of justice, upon which not only the safety of the community, but all that is dear in life depends, the calls of private friendship must, or at least should, always give way to the stern demands of public duty. And as the prevention of crime depends almost as much upon the rapidity as upon the certainty with which the punishment follows upon the detection of the offence, the judge who improperly retards the execution of the sentence of the law after the accused has been rightfully and legally convicted of the offence does nearly as great an injury to the public as one who screens him from punishment altogether.

"Having, therefore, arrived at the conclusion that there is no probable cause for supposing that there is any error in the judgment in this cause, or any reason to doubt that the prisoner has

been properly convicted, if the jury came to a correct conclusion upon the questions of fact which belonged to them exclusively to decide, I must do as the justices of the Supreme Court have done, refuse to allow this writ of error." (*Colt vs. The People*, 1 *Parker's Criminal Reports*, 612.)

There was this peculiarity about the Colt case, that while Adams's death by Colt was evident, and the after indignities in relation to the body were the acts of the latter, yet there was no living witness to tell of circumstances between parties which caused the death-blows—no one to speak of provocation, save the prisoner himself.

During Colt's imprisonment he wrote many letters and replies to epistles. Nineteen of them have been printed. In one, he gives his own version of the affair; and shows how the whole matter of difference between Adams and himself, and which led to the killing, was the paltry sum of one dollar and thirty-five cents.

"Adams's assault on me was entirely wanton. I never was cooler or calmer than when he came to my office; and his entrance was abrupt and quite unexpected. He accused me at once with an intent of cheating him, to which I calmly replied that I was astonished he should say so, and requested him to give some reasons for warranting such a charge. Word followed word, and in the mean time I drew out his account from my portfolio, and so far as there was cheating on foot, I showed him the evidence of it, on his part, in his account. As he would not hear to reason, and feeling alarmed at his manner and language, I applied to him unavoidably, in answer to his abuse, in perfect justice, his own unmeasured terms. At this he became exasperated, and gave me a slap with the back of his hand across the mouth, which, you may be assured, was returned, in due justice, as I sprang to my feet in self-defence. He almost instantly seized hold of my neck-cloth, which placed me in his power—pressing me to the table and wall; he struck me three or four times in the breast, and seized me ———. Every thing seemed to turn black. I was in agony and exerting myself for relief, how I know not. The last distinct recollection I have, before I was relieved by his fall, was that of trying to press

him off with my left hand as I held to his collar, endeavoring with my right hand, at the same time, to raise myself from the table, as he had me pressed over backwards upon it. It was in this painful position I seized that accursed hatchet and gave him the unfortunate blows I did. When relieved from his horrid grasp, I beheld, for the first time, my awful defence. Heaven only knows the number of blows I struck him. There may have been four or five. And when I reflect upon the instrument most unfortunately seized and instantaneously used, it is only to be wondered that his head was not dashed into a thousand pieces. The blows were confirmed by the evidence of Seignette and Wheeler to be instantaneous, who state that they heard a rush like two men coming together, something like the clashing of foils—a singular, but doubtless a perfect description of the sound produced by the blows*—a fall of a heavy body, and all was silent; as, in truth, all was then silent.

“There never was evidence that appears at first sight so slight and yet so perfectly corroborating the truth of any man’s statement, as does the evidence of these witnesses confirm the facts in the case of this unfortunate conflict, and it is the more astonishing as they were privately occupied in an adjoining room, and suddenly and by surprise aroused by the noise of the scuffle. If I was to be visited with so great a misfortune, it must, in the minds of every honest man who calmly weighs the evidence and the facts, appear that a probationary Providence was clearly extending his hand, though unseen, to carry me unscathed through the minds of the just and upright of my fellow-men; and this too, taken with the evidence of his coming in bad blood to my office, together with the fact of his account being wrong, is clearly sufficient in the minds of those who desire in the least to arrive at the truth, to establish my innocence of every thing like a desire or conception of inflicting a permanent injury. There is a class, it is true, that such evidence

* Query: Whether the breaking of glass might not have caused this sound? It will be remembered that remains of a shattered looking-glass were discovered in Colt’s room.

cannot reach, even though it was 'written upon the wall' and sounded upon their ears with the thunder's peal, from the fact that such always judge others from the possessions and corruptions of their own bosoms, driving far off the holier sanctuary of reason which controls the mouths of the reflective and would be truly just. Adams's account against me was wrong. It is now wrong on his books, and put there by his own hand. There was a sad oversight on the part of counsel in not showing to the court the evidence of this fact by producing his books, over and about which the quarrel took place. The account as presented was seventy-one dollars and fifteen cents. Fourteen dollars of this was part of an old account that had been once settled and agreed to by his taking the stereotype blocks belonging to my work on account, originally without my knowledge, and having had them altered and appropriated to his own use.

"This much of the account he partially admitted was incorrect. But the remainder, as he had it, fifty-seven dollars and fifteen cents, should have been fifty-five dollars and eighty cents. This last sum I insisted upon being the amount I owed him for his last printing, which he denied, with his accustomed epithets and a blow as above stated. Fifty-five dollars and eighty cents was the bill for my last printing, which was contracted to be done at a credit of sixty days. There was not any thing due him when he came to my office, as the work had not then been executed twelve days. You will see, *for the paltry sum of one dollar and thirty-five cents the quarrel ensued*, as a consequence of his being at that time in a passionate and unhappy mood. But I was no more than correct in rejecting this unjust charge; had I not have been so, I believe the unfortunate termination would have driven me to derangement."

"—Although I stand condemned by twelve men, do not think that it causes me so much pain as you imagine. No—no. Death hath no terrors for me. There is a world above this; and I believe a just one. Man, at the worst, can only destroy the body. I did but defend myself against a wanton, vile and unpardonable attack. This I would do again, at any time, when insulted and

assaulted. No man would do less. His very nature compels him to this. I have been tried and condemned for endeavoring to secrete a misfortune, not for killing a man. Prejudice or error misled or governed the whole proceedings of the trial—justice took no part. The time will come when men will look upon this whole affair in its proper light—at least, I believe so—perhaps after I have suffered; and believe me truly, sir, that I should prefer a thousand deaths and be thought innocent, than live a single life to be pointed at as guilty of a crime that my very soul would shudder at the mention of even from boyhood up. Do not think that I fear death. I have nothing in this affair to reproach my conscience with. Before my God, within the frontal of Heaven, I can exclaim to THE MAN: ‘I was your friend, for this you abused me. I asked you to be just, for this you accused me of injustice; for calm words, you gave me insulting language; for exemplary denial, you gave me blows: for this you accidentally fell the victim in a resistance to your wanton and unjustifiable assault—Heaven protect the innocent and unsuspecting in this affair—Heaven will be just.’ ”

In another letter, he answers a lady of Boston, who had written and asked him, whether he read and believed in the Bible? He responds very fully. States his belief in the spirit of the Bible “at least in the religion therein taught;” considers it “an inspired book and intended as a guide to man.” But he thus boldly handles original sin and infinite punishment. “If you desire to know whether I believe in the Bible after the old bigoted and nearly worn-out dogmas, such as the original sin and its counterpart, ‘an infinite punishment:’ by no means, certainly I do not. To say that a child is a sinner when it is born into the world, is, in my mind, downright nonsense. A statement that cannot be shown by any tenor of reasoning which all that is good or can be arrived at by the purest conception of thought revolts against as despicable and unjust. It is, in the very essence of the conception, injustice. An injustice, not to the parents, for they are simply the instruments used to produce the being; nor to the child, a being gendered of matter without control or conception within

itself: to God, the creator and the giver. Consequently, I do not believe the Bible according to sectarian views or your opinions, that is, so far as the construction of said instrument is brought in evidence of original existing sin in man either by perversion or otherwise. If you will give a fair construction to the phrase 'original sin,' as applied to our existence and conclude that it is intended to convey no more than the fact that man is born into a world where evil exists with and in contradistinction to good or, in other words, that the child when born is not sin, but only born into a world where sin exists and, thereby, not impeach both the justice and goodness of God himself, I will, most happily, join in any construction that may, in fairness and reason, be placed upon the Scripture.

"Infinite punishment: Man, we hope, is intended from the beginning of this existence to remain for ever a being in existence; in a spiritual existence, if not physical. His acts, however all of them in this corporeal existence are finite, and although he may sin and that too against an infinite God, still that God is one of infinite goodness. Agreeably to my views, it is as absurd to suppose that the Creator would inflict an infinite punishment upon one of his creatures for a finite action, as it is to suppose, in the first place, that he created man as sin. Man is doubtless punished according to the deeds done in the body."

When Colt was ultimately arraigned for sentence, he handed up a paper. The judge asked if he wished it to be read aloud; on answering in the affirmative, his honor so read it. The document was mainly marked with strong feeling against the jury, in proof of which he asserted that one had said, he, Colt, ought to have been hung first and tried afterwards. Also, he trusted the judge would spare his feelings and make as few comments as possible and dispense with many of the forms generally used on occasions of this mournful character. The judge made a response to this. Whereupon Colt said he had committed an act which any one in his situation would have committed; and he would, if placed in the same situation, commit a similar act, for it was done in self-defence. He was sentenced to be hung on the eighteenth of November, 1842.

Three days before the day fixed for Colt's execution, his counsel made, signed and caused to be published a "solemn protest against the legal competency of the court before which he was convicted and of the warrant under which he is held subject to execution." This was directed to the Sheriff.

Some days after sentence, Colt asked the physician to loan him a book on anatomy and to point out the arteries to him. This was declined.

The Rev. Dr. Anthon attended Colt as his minister. The condemned had expressed to Dr. Anthon strong feeling for a child he had by a woman who remained faithful and attendant even during these his prison days and wished to be married to her. The marriage service was performed by this reverend gentleman early in the morning of the fatal day and Colt handed the clergyman five hundred dollars for the child's benefit.

Afterwards a relative, his counsel and friends visited and bade him farewell. He then (this was about two o'clock and the hanging was fixed for four p. m.) requested to be left alone.

At about fifteen minutes before four, the Sheriff, in company with the Rev. Dr. Anthon and some few others, went to Colt's cell, to apprise him that the time for his execution had arrived—when, on the door being opened, he was discovered lying upon his cot dead, having added suicide to the other act. A Bowie-knife was sticking in his body—his heart had been pierced. At this moment, with a surging multitude outside of the prison, the fire-bells rang and engines thundered towards the jail, for the wooden tower which had, a short time before, been erected over the vestibule of the prison, was blazing.

This case had two coroners' inquests; one on Adams and now another on the man who had killed him. The latter found that Colt had met his death by a wound inflicted by himself with a knife in his left breast, "but the jury were unable to say by what means he came possessed of the knife."

His body was given to his relations.

The burning of the tower over the vestibule of the prison was purely accidental. A stove had been lighted and left burning.

Its attendants, from excitement and curiosity, having left it, and by some means, the wood-work became heated and ignited.

The verdict of wilful murder against Colt created much excitement and several members of the Bar met together, gave their views and were active with the Executive. And certainly, although there was a weapon which could be used as a deadly one and had been so employed, yet the motive to murder is not clear—nothing looking like premeditation.

Suppose, after the death, Colt had not touched the body, but had declared he killed Adams under the circumstances and provocations contained in one of his letters: surely, a legal mind would hesitate in going further than manslaughter, even allowing that his own declaration was, of course, not admissible. It is very probable the jury had their minds affected by the extraordinary acts of Colt *after* the killing, although it is a question how far they had a right to bring these to bear in considering their verdict. Pains taken to hide a crime may be revolting and immoral, but they do not amount to a statute-wrong punishable with death. To hide a killing may be legally wrong, but it cannot amount to a *cognovit* of murder. It is of man's nature to conceal a crime.

A reported case decides that the principal object of the present Revised Statutes of the State of New York (1830) was to restore the common law of murder as it anciently existed, by discriminating between a felonious killing with malice aforethought and a felonious killing without such malice; and, thus, restrict certain cases to the grade of manslaughter which theretofore were held to be murder. (*The People v. Enoch*, 13 *Wendell's Reports*, 159.) There must be premeditation and design. These are indispensable ingredients in making out the crime of murder.

HENRY CARNAL.

The case of Henry Carnal presents remarkable facts, and shows admirable perseverance and professional attention on the part of his counsel, Mr. Henry L. Clinton; especially as this gentleman was not retained through fee in the usual way as between counsel and client.

Carnal arrived from Switzerland and went to a boarding-house in Dey Street, New York, kept by Charles M. Rosseau, where he slept in the same room with two of Rosseau's sons. About two or three days thereafter, and during the middle of the night, these sons were awakened by some one striking them. They attempted resistance, but in vain, being repeatedly stabbed with a dirk in the breast and abdomen by some one who was standing over them. Their shrieks alarmed the father, who slept in another room. He went towards their apartment, when he was met by Carnal. No one had struck a light. The father assailed him with a knife, and Carnal plunged a dirk into the neck of Rosseau, who instantly fell dead. The former ran out of the house into the yard, and plunged down an area some thirty or forty feet. This was in a cold night of December.

The next morning he was found in the area with his arm broken, shivering, with no covering on his head, and otherwise but partially clothed, apparently stupefied with fright, and presenting altogether a very wild and forlorn appearance.

It turned out that the two sons were badly wounded, their bowels protruding from the stabs they had received; and it was thought they were fatally struck. However, they finally recovered, and were the chief witnesses against the prisoner on his trial.

He was indicted and tried in March, 1851, for the murder of Charles M. Rosseau. Carnal protested his innocence of any contemplated murder, and claimed that he was awakened by the shrieks of the sons, and, in the confusion, rushed out of their room, when he was met by some one (who proved to be their father) who assailed and cut him with a knife; and that he drew his dirk and struck with it in self-defence. At the time the trial was called on, Mr. Henry L. Clinton, who happened to be in court attending in another case, was assigned to defend the prisoner. He tried to decline, but the court would not excuse him. Mr. Clinton then asked for a postponement for a week or two, so that he might the better prepare; and this he claimed more especially because he did not speak the prisoner's language, nor did the prisoner know English. The court, however, declined to grant the motion. The

trial occupied several days, resulting in a conviction, and the prisoner was sentenced to be executed.

Before the time for the execution arrived, Mr. Clinton obtained from the Governor of the State a respite, in order to move in the Supreme Court for a new trial. Before the case was actually taken there, the same counsel ascertained that after the jury had retired to deliberate on their verdict, they sent word to the court, through the officer having them in charge, that they desired to know the law of manslaughter, and that the officer returned and informed them the court stated they had nothing to do with manslaughter, as the case was not such an one. Mr. Clinton obtained affidavits from jurors, and procured from the Governor a respite until the 19th of September, 1851, in order to move in the Oyer and Terminer to set aside the verdict for irregularity.

Early in September the motion was made, but the decision of the Court denying it (1 *Parker's Crim. Rep.*, 237) was not rendered until Monday preceding the Friday when Carnal was sentenced to be hung. Clinton at once went to Albany, for the purpose of obtaining another respite. He ascertained, on his arrival there (Tuesday morning), that the Governor was in Buffalo, and would not return for several days; so it was impracticable to obtain another respite. He then obtained from Judge Harris of the Supreme Court (the Attorney-General appearing on the part of the prosecution) a writ of error, with a stay of proceedings, until the case could be carried to the Supreme Court, and a decision had on the motion for a new trial. Clinton returned to New York on Thursday, and in the course of the afternoon, served the necessary papers upon the Sheriff to prevent the execution on the following day.

It was soon rumored about the city that Mr. Clinton had obtained for his client a stay of proceedings. The excitement was intense, for the feeling against the prisoner was bitter in the extreme. The whole community regarded the homicide as a most atrocious and appalling murder. The Sheriff was advised that the stay of proceedings was illegal and not binding. He informed Mr. Clinton he should not obey the order, and should proceed with

the hanging on the following morning. Mr. Clinton gave the Sheriff formal notice, that if he hung the prisoner he would see to it that the Sheriff was at once indicted and prosecuted for murder. The following morning, at the appointed hour for the execution, ten o'clock, a large crowd assembled within the jail-yard to witness it, and crowds thronged the streets in the vicinity of the jail.

The execution was postponed from hour to hour until four o'clock in the afternoon, when it was abandoned altogether. In the mean time, the crowd inside and outside the jail-yard remained and, at intervals, shouted for Carnal to be brought out.

The Sheriff hesitated all day as to taking the fearful responsibility of proceeding with the execution, in the face of the order of Judge Harris. The District-Attorney, Mr. N. Bowditch Blunt, the official adviser of the Sheriff, thought the execution ought to proceed, unless the Governor granted another respite. He telegraphed the Governor, but his excellency refused to interfere. All the deputies and subordinates of the Sheriff determined to resign their offices rather than assist in or be connected with the execution. Finally, a little before four o'clock p. m., the District-Attorney wrote the Sheriff a letter, advising him that it would be better to delay the execution until the case had gone before the Supreme Court. Very soon afterwards the District-Attorney made a motion to set aside the writ of error and vacate the stay of proceedings. This motion was denied (*Ib.*, p. 262). Mr. Clinton, with whom Mr. Ambrose L. Jordan was associated, then brought on his motion before the Supreme Court for a new trial. It was granted (*Ib.*, p. 272). The District-Attorney then undertook to carry the case to the Court of Appeals. For this purpose he procured the passage of a law (which he drew) permitting the Court of Appeals to review any judgment rendered by the Supreme Court in like cases. Under this statute, the case went to that court. Mr. Clinton moved to dismiss the writ of error brought by the District-Attorney, on the ground that the statute was so drawn as not to apply to cases where judgments in the Supreme Court had been entered up before the statute took effect; and on this ground the court dismissed it (2 *Selden's Reports*, 463): The

District-Attorney, having discharged his witnesses after getting a conviction, was not in a condition to try the case again on a charge of murder; for the sons of the deceased had been held a long time as witnesses, and as soon as they were at liberty, they left the country. But as sufficient evidence could have been had to obtain a verdict of manslaughter, the prisoner finally pleaded guilty to a low degree of it; and he was sentenced to a short term of imprisonment, which he served out and was then set at liberty. The last heard from him was, that he had married and purchased a farm in one of the Western States and was "doing well."



CHAPTER X.

SOME THINGS ABOUT SOME JUDGES AND LAWYERS.

CHANCELLOR KENT AND HIS SON, JUDGE WILLIAM KENT.—AARON BURR.—CHANCELLOR SAMUEL JONES.—RECORDER RICHARD RIKER.—MR. GEORGE GRIFFIN.—CHANCELLOR WALWORTH.—JUDGE JOHN WORTH EDMONDS.—MARTIN S. WILKINS AND GOUVERNEUR MORRIS.—JUDGE OAKLEY.—DAVID B. OGDEN.

CHANCELLOR JAMES KENT AND HIS SON, JUDGE WILLIAM KENT.

THE Constitution of the State of New York having limited the tenure of judicial office to the attainment of sixty years, Chancellor Kent had to retire on the 31st of July, 1823. This limitation was introduced into the first Constitution of the State in 1777, when it was inserted to prevent a recurrence of the inconvenience which had been experienced in the case of an individual who last held the office of chief-justice under the Colonial Government. Hamilton, in the *Federalist* (No. 79), thus disapproves of the provision: "In a republic, where fortunes are not affluent and pensions not expedient, the dismissal of men from stations in which they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench."

The continued competency of Mr. Kent cannot be more gloriously illustrated than by the fact that it was after his retirement from the chancellorship he composed his *Commentaries*. These were the fruit of his acceptance of the professorship of law in Columbia

College; and he gives us to understand, in the preface to his first volume, he was strongly induced to accept the trust from want of occupation, being apprehensive that the sudden cessation of his habitual employment and the contrast between the discussions of the forum and the solitude of retirement might be unpropitious to his health and spirits and cast a premature shade over the happiness of declining years.

Ex-Chancellor Lyndhurst, on the very night on which he entered his ninetieth year, astonished the House of Lords by a speech of incomparable clearness and ability. Lefroy, Chief-Justice of the Queen's Bench in Ireland, was still on the bench at ninety years of age. Judge Samuel Jones argued with great ability a case before our Court of Appeals when he was eighty-four years old.

Chief-Justice Sir William Erle preserved the full command of his bodily and mental faculties beyond an age of seventy years.

The members of the Bar residing in the City of Albany (those of New York had done so) addressed Chancellor Kent on his retirement in nice set language. The following is worth quotation, for its delicate and affectionate tone: "Still, the members of the Bar and your fellow-citizens cannot but deeply deplore the loss of a learned and upright judge, who has marked the great outlines of our judicial system and whose decisions have elevated the character of our courts to a high rank in the nation; of an accomplished scholar, whose various learning has been devoted to the illustration and embellishment of legal science; of a warm and generous patron of young men, encouraging them in the career of usefulness by his kindness and stimulating their ambition by his example; of a gentleman, exhibiting in his official intercourse the most accessible and unostentatious manners, neither affected by dignity of station nor rendered overbearing by the exercise of power; of a moralist, whose pure and incorruptible mind has been a constant terror to dishonesty and fraud." (*7 Johnson's Chancery Reports*, 351.)

Lord Thurlow's observation of Lord Mansfield would apply to Chancellor Kent: "Ninety times out of a hundred he was right in

his opinions or decisions and when once in a hundred times he was wrong, ninety-nine men out of a hundred could not discover it."

In December, 1793, Chancellor Kent delivered lectures on the law of nations, in connection with his then professorship of law in Columbia College. These were printed in pamphlet form. They are referred to by Browne in his treatise on the Civil and Admiralty Law and it is believed to be the first instance of reference to an American writer on law in any transatlantic work.

Judge Murray Hoffman informed us that Kent, in the earlier part of his career, was aware of his style being copious and somewhat diffuse and being a great admirer of Tacitus, he carefully read this author every year, especially the life of Agricola, with a view to adopt his diction; and the judge added that observers can trace how and when the mind of the Roman lawyer infused itself into the decisions of the American judge.

Gibbon considered Tacitus the first historian who applied the science of philosophy to the study of facts. Johnson does not consider him perfect in fullness. "We talked of Tacitus," says Boswell, "and I hazarded an opinion that, with all his merits for penetration, shrewdness of judgment and terseness of expression, he was too compact, too much broken into hints, as it were, and, therefore, too difficult to be understood. To my great satisfaction, Dr. Johnson sanctioned this opinion. 'Tacitus, sir, seems to me rather to have made notes for an historical work than to have written a history.'"

When James Kent was Recorder of New York—this was in his early days—there was a case before him in which Alexander Hamilton and Richard Harison were opposing counsel. A nice point was involved; and there was an impression on the minds of both that some old reporter had given a case in which a similar point was involved. After counsel had closed, Mr. Recorder Kent gave the title of this old case and where it was and even the page, names of the barristers who were engaged and almost the very words in which the presiding judge uttered his decision. Many years afterwards, a member of the Bar told Chancellor Kent how he had heard of this incident from an old lawyer.

"Yes," said the Chancellor, "I remember the circumstance very well; and I could have told all I did even without the particular circumstances which had impressed me with the cases in this old reporter. You must know that I went in a sloop to Poughkeepsie to commence the practice of my profession—it was a voyage of about a week. At this time, a lawyer's library could all be put upon a mantelpiece. By some strange casualty, I found, loose in the sloop, a volume—in fact, this old reporter. It was 'a God-send;' I read and enjoyed it during the voyage; and this, especially, has made me remember every case in it."

Mr. William Kent, only son of the Chancellor, had a summer residence at Summit, in the State of New Jersey. A friend went there with him; and they observed the Chancellor high up in a cherry-tree, plucking and enjoying the fruit—so high up, that the boughs swayed under him. The son begged the father to be careful, to come down; but the old gentleman said he had not done with the cherries. Mr. William Kent at last became alarmed and prayed him, most urgently, to descend at once and do so most carefully—"Never mind appearances, but do come down, pa!"

"My son," said the cheerful-hearted Chancellor, "I am used to elevated situations, and know how and when to descend with dignity."

The Chancellor and a friend were invited to a party; and the question with them was, whether they should go in shoes or boots. The friend fixed it on "pumps;" and they set off, walking down Broadway. The Chancellor in a street never took much heed as to keeping pace with a companion. He happened to look down the legs of a man who was side by side with him, and whom he must have supposed to have been his friend, but who was not; and observing that these legs wore boots, he layed hold of a man's arm and instantly began upbraiding:

"Now, my dear fellow, that's not fair; you agreed to pumps. you have practised a positive imposition on me—it's not at all fair."

Chancellor Kent's rule was to retire to rest about ten o'clock. but even before that hour, he would occasionally become drowsy upon a sofa. One evening Judge Catron, of the United States

Bench, was announced; the Chancellor was between sleep and wake, the room was in twilight, and Mr. Hone, then present, pronounced Judge Catron's name and introduced him so that the Chancellor caught it *Catlin*, and fancied the gentleman to be Mr. Catlin who had been among the Indians, and who was then illustrating, by pictures and exhibition, their habits and customs.

"Glad to see you," said the Chancellor, in his off-hand, simple, quick manner. "Glad to see you, Mr. Catlin, you're a wonderful man. Yes; a wonderful man. You'll make your fortune with your exhibition of yourself and your pictures, and Indian things and curiosities. I advise you to go abroad and show yourself around, for it must and ought to make your fortune, Mr. Catlin."

When Canandaigua had some sixty or seventy-five inhabitants, and all the villages of the western part of the State of New York were as scattered huts, Chancellor and Mrs. Kent were travelling in a one-horse carriage, on an unfrequented road, towards the house of friends who lived in that then almost inaccessible region. It was in the Phelps-and-Marvin Purchase, the desponding buyers of which were cheered by the prediction that in "less than fifty years a line of daily stages would be running from Albany to Lake Erie." Night came on, and our travellers lost their way; took a wrong road—the horse feeling-on as well as he could in the gathering darkness of the forest path. At length, the animal stopped, just as the clear blue eyes of the Chancellor discerned the light of a dwelling in the distance. The tired animal was cheered on; and the weary travellers reached a log-house, where a wood fire was glowing, and a long tallow candle at the window shining like a good deed in a naughty world. A woman, the only occupant, made our travellers welcome; explained how she had got a supper ready for "her man," who was cutting cord-wood a few miles off, and who, sometimes, did not come home until late. She gave them a good, homely supper with tea; set aside her husband's repast for him when he should arrive; told her guests, she guessed they were awful tired and would like to go to bed, as she would; and added, "You may take our bed in the corner there, and when my man comes, please let him in; we'll sleep up cham-

ber." So saying, she bade them good-night; took a candle; and went up a ladder through a square hatchway or trap-door to an upper chamber. Her guests, also, retired; but as they lay conversing, the Chancellor suddenly said—

"Betsey, the door does not lock; our hostess's 'man,' as she calls her husband, will be coming home soon, and when he sees another man in his own bed with a woman, whom he may reasonably suppose to be his wife, he, a wood-cutter, will begin to 'chop,' and that will never do. I'll fix it; I will place the table against the door, and while he is pushing it open, I can make the whole thing plain to him in a minute."

So the Chancellor arose, and had just pushed the supper-table against the door, when a tall, stalwart figure, in red flannel shirt-sleeves, with a big, black catskin-cap upon his head, shoved open the door. He looked like a thunder-cloud. But he was instantly met with the following by a gentleman in his shirt:

"My name is James Kent. I am Chancellor of the State of New York. The woman in that bed is my wife Betsey. Your wife is up-stairs. There is your supper." (57 *New York Knickerbocker Magazine*, p. 346.)

"I called," said Vice-Chancellor McCoun to the author, "on Chancellor Kent one morning, at his house in Albany, not long after he received his appointment. I think it was in 1815 or '16. I found him alone in his study or private office, which contained also his library. His desk appeared not much encumbered with papers, as the business of the court at that period was not so burdensome as it afterwards became. After a little ordinary conversation, my attention was drawn to the books on his shelves; and there I found not only the ancient and modern works relating to equity jurisprudence, but also many of the most celebrated works on Roman, civil law and the laws of continental Europe, in both Latin and modern French.

"These languages, the Chancellor understood perfectly. He told me that, by study alone, and the use of a French and English dictionary, without other assistance or instruction, he had acquired sufficient knowledge of the French to enable him to read and

translate it into English, though he knew nothing of the French mode of pronunciation, and could not, therefore, converse in that language. This was a matter of some surprise to me. But I was still more surprised, as I passed my eyes along the shelves of his more miscellaneous collection, to find a number of books of voyages of discovery and travels in the remote parts of the earth; and among them were Vancouver's voyage of discovery to the Oregon, and the island which bears his name. On opening the volumes, I found the Chancellor's MS. notes on the margin of very many of the leaves. This led me to remark that I perceived he had read Vancouver with great attention. 'Yes,' he responded, 'that work has pleased me very much, and I have written the author, who is still living in England, a long letter on the success of his voyage, and thanking him for the great pleasure I have derived from the perusal of his publication.'

"He then," continued the Vice-Chancellor, "went on to speak of his fondness for geographical studies; alluded to some districts in Central Asia as being the most beautiful of any on the face of the globe; and concluded by saying that if he had made the science of geography his profession, he believed he would have attained greater distinction in that way than he ever should arrive at in any other; 'for,' said he, 'I consider myself now a better geographer than I am a lawyer.'

"Another rather amusing incident occurred," added Mr. McCoun, "while I was with the Chancellor that morning. A man from the country, apparently a farmer, called to see him on business. He was shown in, and thereupon mentioned where he lived, which was some two or three days' journey from Albany, and which journey he had made on horseback, and fearing he might be too late, had set forth that morning before daylight. 'And I hope,' he continued, 'I am here in time.'

"'In time for what?' inquired the Chancellor.

"'Why, to answer to some complaint which has been made to you against me, as I understand.'

"The Chancellor could not but smile at the man's simplicity and earnestness, as he proceeded to say:

“ ‘Here is the paper I have received. It commands me to appear in person before you to-day and answer a bill of complaint exhibited against me; it threatens me with a fine of two hundred and fifty dollars if I should fail to appear; and as it has your name to it as Chancellor, I suppose it came from you—didn’t it?’

“The Chancellor then explained to him what it meant; a suit had been commenced against him in the Court of Chancery, and if he had any defence to make he should employ a lawyer to appear for him and put in an answer to the bill, and so on. He did not see the necessity of having a lawyer, as he was now before the Chancellor in person and could soon tell him the whole story. It seemed difficult to make him comprehend why the Chancellor could not hear and determine his case until it was brought regularly before him in court, and that he must have a lawyer. At last, the Chancellor said to him:

“ ‘Suppose you were taken ill on your journey, or you should fall from your horse and break your arm or leg, wouldn’t you get a doctor to attend you?’

“ ‘Why, yes,’ he supposed he should.

“ ‘Then,’ said the Chancellor, ‘go and do the like now, only be sure this time you get a lawyer and not a doctor for your present ailment.’ ”

Some twenty years later in the life of the eminent Chancellor, the friend who furnished the above anecdotes presented him with a copy of the first volume of Edwards’ Chancery Reports, containing the adjudications of Vice-Chancellor McCoun; and received, in return, this letter expressive of his regard and friendship:

“NEW YORK, January 14, 1884.

“VICE-CHANCELLOR MCCOUN, 30 WARREN STREET:

“DEAR SIR—I return you my respectful and grateful acknowledgments for the first volume of Edwards’ Chancery Reports. The volume has been read attentively by me, and I beg leave to bear my testimony to the purity, simplicity, ability, learning and diligence with which equity law is administered in your court. With

my best wishes for your continued health and zeal in the discharge of your high trust, I am truly your friend, "JAMES KENT."

Mr. Henry Cary was in Chancellor Kent's library. "Mr. Cary," observed his honor, "perhaps I can, in one respect, say more concerning this library than you can of yours. I have read every volume in it through and through; and you will find my remarks and annotations in pencil in every book upon these shelves. You don't doubt me, of course, when I say so, but, test me; take 'em out, here, there, anywhere." A cursory examination showed that each volume, so far as examined, was crowded in the margin with copious notes.

Mr. Levi Beardsley, in his *Reminiscences of Otsego County*, thus brings in pleasantly, and, we feel sure, truthfully, Chancellor Kent:

"My first appearance in chancery had some amusing incidents. I was in Albany very near the time Chancellor Kent had published his *Rules of Practice*. I was entitled to an examination as solicitor, but had never read a book on chancery practice, and but barely glanced over the rules. Knowing the Chancellor to be talkative, kind, and good-natured, I called on him at chambers and exhibited my Supreme Court license; told him I thought of applying for one in his court. He remarked that he was very glad of it and asked me what books on chancery I had read.

" 'Not any,' was my reply, 'but I have to-day bought your new rules, and am going to read them.'

" 'Well,' says he, 'you are a good-looking man, and are taller than I am; I know your brother Sam personally, and you by reputation. Your father and I were born in the same neighborhood, and were nearly of the same age. Go to my brother, Moss, who is register of my court, and ask him to come here and bring the rolls. You know Moss, don't you? He is a clever man; used to live in Otsego, and was called the 'honest lawyer;' bring him and I will admit you. You must pay Moss the fees for admission, for he likes the fees; and you must read my rules. If you come into court without understanding them, or with a weak cause, your client will have to pay for it.'

"In this way he ran on for some time, and told me his dining hour, which he said was early, and was regarded unfashionable; described a journey he had taken with Mrs. Kent, and another he intended to take."

To this we may very well harness the following, which we had from Mr. Charles P. Kirkland.

"After my admission," said Mr. Kirkland, "to the Supreme Court, and shortly before Chancellor Kent's retirement from office, I called one morning at his house, for the purpose of being examined and admitted as a solicitor in chancery. I found him engaged in shaving, with his coat off and razor in hand. I told him the purport of my call. He asked me if I knew his 90th rule. I answered, I did not remember it.

"'Go,' said he, 'to my brother Moss' (Mr. Moss Kent was the Register in Chancery) 'and he will give you your license.'

"This is all that passed, except a kind inquiry after my father. The reason of the Chancellor's brevity on such occasions was, as we boys of his day understood, that he viewed examinations as of no great utility, and especially after admission in the Supreme Court, which was a pre-requisite to admission in his court. And he used to say," continued Mr. Kirkland, "that if young men, when admitted, were found unqualified, the people would soon discover it, and they would have no clients, and therefore, could not do much harm."

"On the first of January, 1847," says Mr. Beardsley, "I made a New Year's call on the Chancellor, and also on Chief-Justice Spencer, then in New York. The Chancellor was cheerful and affable as ever, enjoyed good health; took a glass of wine; remarked that he had always taken his wine; that he was old-fashioned in his opinions; that he was sure wine did him no harm, but was rather a benefit; that he was never ultra in his views; and he would not give up well-settled opinions or habits of life to conform to ultraisms of the day."

Chancellor Kent had been in a constitutional convention with Robert S. Rose. On one occasion, when Mr. Levi Beardsley applied for an order appointing appraisers, his honor named Mr

Rose as one, endorsing him thus: "Known to me to be an honest man."

A similar thing has been recorded in connection with the name of the late Mr. Peter Augustus Jay. The Chancellor had to name some professional gentleman who should make a valuation and report in a case of magnitude and nicety. "Let it be referred to Mr. Jay; if there ever was an honest man, it is Peter A. Jay."

Mrs. Kent and the Chancellor were walking in the street, when a person, for whom his honor had neither respect nor liking, came towards them and made free to stop and extend his hand, which the Chancellor not only took, but exclaimed:

"Glad to meet you; glad to meet you."

After they had parted, Mrs. Kent said:

"Why, Chancellor, from what I have heard you remark about that person, how could you say you were glad to meet him?"

"So I was—so I was; I was glad to *meet* him; but I should have been very sorry if he had been going our way."

Chancellor Kent did not like a Democrat. A lawyer called and found him reading the New York Evening Post.

"What, Chancellor! you, of all men, reading the Evening Post?"

"Yes! and pray why should not I see what the devil is doing in the world as well as other persons?"

Chancellor Kent was hearing a case in which Mr. Caleb S. Riggs was counsel. The latter had a habit, when addressing the court, of taking up a pen, holding it out horizontally before him and of often saying, "Now, I undertake to say." The Chancellor had heard Mr. Riggs through a long argument, and being satisfied he was wrong, expressed his opinion in an off-hand way, and so as to show plainly he did not wish to hear any thing more. But Mr. Riggs, difficult to stop at any time, was inclined to go on. The Chancellor was seated in his chair in the then court-room in the City Hall, New York. There was a window on one side looking towards Chatham Street and another on the other side looking towards Broadway.

"Now, if your honor please," went on Mr. Riggs, balancing his pen, "I undertake to say—"

"I don't care what you undertake to say, Mr. Riggs," said the Chancellor, "my mind is made up."

"But if your honor would only hear—"

"I have heard you fully, Mr. Riggs, and don't want to hear any thing more."

"But, if your honor please, there are some considerations I think I could adduce which would—"

With this, the Chancellor waxed impatient, turned suddenly and looked out towards Chatham Street, saying,

"Talk away, but there is no use in it; my mind's made up."

"Now, if your honor please," rejoined Riggs, "I think I may safely undertake to say—"

Upon this the Chancellor twisted himself about and looked out towards Broadway, saying,

"Talk away, talk away; talk all day, but it will be of no use."

In a moment or two the Chancellor shifted towards Chatham street and then again in the direction of Broadway, pretending not to hear, until at length Mr. Riggs, without manifesting the least disturbance of mind, but finding it useless to continue longer, reluctantly took his seat.

Mr. Riggs had much chancery practice; and, during the time of Chancellor Lansing, was called his ear-wig; but Chancellor Kent did not take so kindly to him. Mr. Riggs, who, as we have before intimated, was elaborate, and perhaps especially so in small matters, had taken an exception to an item in a master's report; and had got to the sixteenth or seventeenth point of his argument:

Chancellor.—"How much, Mr. Riggs, is in dispute?"

Riggs.—"One dollar and seventy-five cents, your honor."

The Chancellor (in his rapid manner).—"I won't hear it, won't hear it; would rather pay it myself."

The gentleman who mentioned this anecdote observed that Riggs should have thereupon drawn an order, reciting the exception and directing and approving that the Chancellor himself pay the said sum of one dollar and seventy-five cents.

Mr. Caleb S. Riggs had so completely schooled his lawyer-mind into the caution which is made to apply to a client in answering a pleading, that, when he was asked a question, he would generally begin with : "Well, not admitting or denying, I believe—" and so on.

Judge William Kent married Mr. Riggs's daughter.

Chancellor Kent was no lover of law-made-easy. The editor of the New York Knickerbocker Magazine has the following :

"When the excellent William Osborn printed our beloved magazine, which he did for many years and most faithfully and beautifully, there used to sit sometimes an aged man with a fresh complexion, but much out of breath, coming up the stairs, who was proof-reading, as we were, and the two discrepant parties employed each a desk, the same two desks nearly touching each other. The hum of the reader-boy, the checking of his unconscious copy volubility, the 'Hold on a minute!' of the practised proof-reader (to whom how many writers are indebted for their uniform correctness and their good taste in selecting expressive words and their collocation and detention of the best!). Well, this aged man was Chancellor Kent reading the revises of his world-renowned Commentaries, of which Halsted & Voorhies, Nassau Street, near Wall, law book-sellers (good Knickerbockers both), were the publishers. Now it befell upon a day that this young man (the present speaker) was made acquainted by our common printer with the revered Chancellor. We had each got through with our work, each was going in the same direction up-town, the great jurist to his house opposite Union Square, the small editor to his in Seventh Street, not many leagues away. It so chanced that we rode up in the same city car. Sitting side by side, we conversed. We said the subjoined words to the Chancellor, 'It has often struck us (editorial and judicial, too, for even a wooden bench is *we* in law) that the legal nomenclature might be abrogated without detriment either to lawyers themselves or to the omnipotent people their clients. Why not state in plain English what I hear every day read in Latin in your Commentaries?'

"'It's all right,' replied the Chancellor, crossing his legs and

standing upright, his cane between them; 'it's all right; we don't want every man to be his own lawyer, as you say, and he couldn't be anyhow if Latin was made the plainest English to him. What kind of legal protection would you have if every Tom, Dick and Harry was a lawyer? All things are changing, as you say, young man; but when you find law made easy to the meanest comprehension look out for countless volunteers in our noble profession, to whom good Latin and correct English are alike inaccessible.'

"And here the Chancellor left the car, nearly opposite (east side) Brown's noble equestrian statue of Washington, Union Square."

We are not inclined to spoil the following good story of the Chancellor, although his indomitable truthfulness might make some who knew him doubt whether he could, even in an innocent matter, use evasion. It is said he was afflicted with a treacherous memory on the subject of names. On meeting casual acquaintances, he was frequently embarrassed as to what he should call them, and so extremely sensitive on this peculiarity as, in some instances, to resort to a regular system of cross-examination in order to ascertain their names without acknowledging he had forgotten them.

"Good morning, Chancellor," said a gentleman, accosting him in the street.

"H-m, ha!" said his honor, "I was wanting to see you to ask you to spell me your name. My wife and myself had quite a discussion last evening as to how it should be spelt."

"How do *you* spell it, Chancellor?" inquired his acquaintance in reply, perfectly understanding the object of the Chancellor's question.

His honor seemed posed. However, he presently rallied and returned to the attack. "Mrs. Kent is a most obstinate woman and always thinks herself right. She persists in spelling your name in her own way, which, I am sure, is not as you spell it."

"How does she spell it?" inquired the other.

The poor Chancellor was at his wits' end, and was casting about for another question, when the gentleman remarked :

"Really, Chancellor, I should not think there could be much discussion as to the proper spelling of S-m-i-t-h, Smith."

"Yes," exclaimed the Chancellor, triumphantly. "Mrs. Kent always insists on spelling it S-m-y-t-h. A very obstinate woman is Mrs. Kent, and never will be convinced that she is in the wrong." Let it be remembered that the gentleman's name was not Smith.

Our Chancellor was one of those men whose innate dignity enabled him to take in good part any familiarity which was the result of ignorance or accident. He was childishly fond of martial music, as much so as Lord Eldon was of seeing a street Punch-and-Judy.

Hearing the drum of a recruiting party, which had taken a station at the corner of the street, beat a point of war, he walked out to listen to it nearer. Insensibly he was whistling the burthen of the tune, when the recruiting officer accosted him :

"You are fond of such music, my fine fellow?"

"Yes," was the reply.

"Well, then," said Sergeant Kite, "why not join us? Good quarters, good bounty, large bounty. Besides, our Captain is a glorious fellow. Why don't you, now? You can't do better!"

"Well," responded the Chancellor, "I have one pretty strong objection."

"What is it?" asked the soldier.

"Why, just now I happen to have a better trade."

"What trade is it?"

"I am Chancellor of the State of New York."

"Whew," half-whistled and half-muttered the sergeant, "strike up! quick time! forward—march!"

Chancellor Kent would not allow his Commentaries to be stereotyped, but kept watching the decisions of the tribunals of America and England and other parts of Europe in matters involving important legal principles, and with which he enriched his favorite work from time to time.

He studied pen in hand, and all his books contained his annotations. His copy of Blackstone's Commentaries is the first American edition, printed in Philadelphia, 1777, and is overlaid

with annotations, showing how diligently the future commentator studied the elegant work of his English predecessor.

There was a pleasant vein of vanity about Chancellor Kent. Mr. Charles P. Kirkland told the author that soon after the Chancellor's retirement, he, Mr. Kirkland—at that time a young member of the Bar—met his honor at a party in New York. The latter was a friend of Mr. Kirkland's father and, for that reason, received him very kindly. In the course of conversation, the Chancellor said he was going to Richmond and added: "While there, I mean to call on Chief-Justice Marshall; we don't know each other. I shall not announce my name at the door, but shall go in; and when I see him, shall ask if this is Chief-Justice Marshall. On his answering in the affirmative, I shall say, 'This is Chancellor Kent.' He will be glad to meet me as I to meet him, and the Chief-Justice and the Chancellor will have a royal time." "The beautiful *naivete*," observed Mr. Kirkland, "with which this was said, will never be effaced from my memory."

A fair specimen of the style of Mr. Ogden Hoffman will appear in his moving the Resolutions passed by the Bar of New York, January, 1848, on the death of Chancellor Kent, when Chief-Justice Samuel Jones presided.

"Mr. President—Upon me, by the appointment of the committee, has devolved the duty of presenting to the consideration of this meeting, the resolutions prepared by them, which I hold in my hand. The crowded gathering of the Bar—the presiding over it by you, our oldest and most respected member—the judges of our courts leaving their judicial seats, arresting the course of litigation, and uniting with their brethren of the Bar in this tribute of condolence and respect, attest that some mighty one has fallen—that the foremost of us has ceased to live—that James Kent—and his name is his eulogy—that James Kent is no more.

"It is fit and proper that this tribute should be paid by the Bar of this State; for it is a proud thought, it is almost a consoling thought to its members—that in this State he was born—that in this State, under the guidance of the learned and excellent Benson, he pursued his legal studies—that in this State his judicial career

was run—and that here, in the midst of us, until yesterday, lived that fountain of learning and of wisdom, the streams of which have flowed into every State in our Union, and in whose waters the aspirants for legal fame throughout our land have laved their limbs, and been refreshed, invigorated, and prepared for their professional conflicts.

“Appointed, at an early age, a judge of our Supreme Court, he adorned the bench by a series of decisions distinguished by profound learning, deep research, accurate discrimination and spotless integrity. Transferred to the Court of Chancery, as Chancellor of our State, in a little more than nine years, he accomplished an entire and wonderful revolution in our Courts of Equity, and built up a system of jurisdiction and jurisprudence upon wise and rational foundations.

“Retired from the bench, his benefactions to the profession and his country still continue, and his ‘Commentaries,’ distinguished alike by classic elegance and profound erudition, have become the text-book of the lawyers of our own land, and have called forth the eulogy and guided the labors of the learned of other climes.

“But brilliant as has been his career, splendid as have been his triumphs in the field of jurisprudence, it is upon the ‘daily beauty of his life’ as a husband, a father, a friend, and at the domestic fireside, which he so deeply prized, that I would love to linger, as adorning our profession and ennobling our calling. As a child, I lived almost beneath his roof, and my earliest recollections are identified with a father’s love and admiration and respect for Judge Kent; and from that hour to this the ripening perception and the maturing judgment have but deepened as they increased the respect and admiration of earlier years.

“I would love to linger upon the purity of his character—the truthfulness of his mind—the honesty of his purposes—upon the child-like simplicity of his manners—the trusting confidence of his friendship—the gushing tenderness towards those who had been his companions at the Bar and the sharers of his toils—a tenderness extended, as I have known and felt, towards even their sons, whose career he would watch and guide with a solicitude almost

parental. I would love to linger on his devotion to the honor and character of our profession—upon the joy which every act or decision, that advanced and elevated it, would inspire—upon his honest and virtuous indignation at every deed that soiled the ermine of the judge or stained the gown of the advocate. But this is not the time for eulogy. The resolutions which I hold in my hand, contemplate that, at some future time, justice shall be done to his character, his learning, his services and his memory. His praise ‘must be hymned by loftier harps than mine.’

“Death has removed from the scene of his labors one of our most illustrious citizens. The venerable James Kent, for sixteen years a judge, and for the greater part of that time the Chief-Justice of the Supreme Court of this State, and for nine years its Chancellor and, since his retirement from public life, the learned commentator on American law, has finished his long and memorable career. The members of the Bar of the City of New York are desirous to testify the respect and affection, the veneration and gratitude in which they hold his virtues, his services and his fame.”

That which Charles Butler attached to the style of Sir William Grant, would have applied to Ogden Hoffman:

“The charm of it was indescribable; its effect on the hearers was that which Milton describes when he paints Adam listening to the angel after the angel had ceased to speak.”

Lord Henley, in his memoir of the life of Lord High Chancellor Northington, observes, in connection with the distinguishing feature of the character of the latter, that the usual mark of superior minds is simplicity. Chancellor Kent was as simple as a very child. There seemed to be no sin in him and his horror of all vice and fraud appeared the result of a repellant power within him—of a nature unmixed with base matter.

* * * * *

Unobtrusive flowers have the finest perfume; and unassuming men charm us most.

When we think of our friend William Kent, it is as though the odor of a violet was again around us.

Mr. Dorman B. Eaton, who was for several years the partner of Mr. William Kent, has prettily touched off—on the author's asking—a few striking features of this charming man:

1. He was always a gentleman; and every one who approached him remarked it, being at once dignified and approachable. I always observed that even common people, having their hats on in the office, when he came in, would, at once, take them off on his approach—even though they did not know him and not the less when he was known to them.

2. When he went into a court-room, if a judge had his feet on the desk before himself, or was resting on his elbow, he would, at once, assume a proper judicial position; and no judge ever failed to bow to him from the bench. A similar influence was always exerted on the members of the Bar present. Loud talking was hushed; more graceful positions assumed—in short, the bearing and breeding of Judge Kent always made themselves felt wherever he was. Nor was this a cold, awing influence, but the contrary—a response due to the respect and admiration he everywhere awakened. I have been often assured that no judge ever preserved so great silence and propriety on the Bar when on the bench; nor apparently made so little effort to secure such results.

3. He was a most voracious reader of novels and read with wonderful rapidity; and yet seemed to retain all the striking scenes which he was very successful and felicitous in narrating. During the last years of his life he often read a volume of fiction daily the week through and no week but devoured its volume.

4. He was kind to all children and talked to them much—even dirty lads in the street. He would often joke with the office-boy; and all such boys adored him.

5. Though an intimate friend of Seward and Thurlow Weed, he instinctively, as a rule, disliked politicians. He would do nothing to gain office—not even state his views on political questions. Once a committee visited him, to learn his opinions on some question, when he was likely to be nominated to office. He listened to them awhile—got disgusted—told several stories at their expense and issued pleasantries; they pressed him for a definite statement

of views. Finally, he said he would reply in the language of a great writer, who, when asked for his opinions, said: "When asked by a proper person, at a proper time and in a proper manner for my opinion, I will hesitate for a long time before declining to take the inquiry into serious consideration." You see this is terribly sarcastic, yet it was uttered in a good-natured, waggish way, which utterly discomfitted his inquisitors—and they retired with a laugh.

6. He often stated that he reversed the maxim of not putting off till to-morrow what he could do to-day and found it save him a great deal of labor. Really, he was inclined to procrastinate. Yet when the time came that he must work, he would labor with intensity, day and night, with great power of endurance.

7. He never had a place for his papers and often lost them and he would frequently say he had devoted one-fifth part of his wakeful hours to looking after lost law-papers.

8. Papers that he was drafting and his notes of testimony he rarely paged and never attached; and the result was, he found them often deranged. I have known him to devote hours to an effort to restore them to order and always with the best humor, but not always successfully.

9. He always underrated himself and dreaded to speak before a court or jury and never did justice to his ability or learning.

10. When a candidate for lieutenant-governor, some temperance people wanted an anti-rum-drinking letter from him and, so, wrote to him for his views on the use of ardent spirits. He wrote, praising temperance, giving his own example in illustration of his estimate of its value, saying he had only drunk one glass in five years, etc.; but ended by saying that he must in truth declare that the principal reason why he had not drunk another glass was that the one glass gave him the gout for a fortnight and he intended not to deprive himself of the right of having the gout or getting drunk as often as he pleased. A thousand votes, perhaps, this joke lost, but what did he care?

11. Judge Kent was one of the most charming and elegant letter-writers this country ever produced.

We have the melancholy satisfaction to give illustrations of this epistolary power. The gentleman to whom the following letters are addressed, and who has placed them at our disposal, alive with his natural sensitiveness and modesty, and eager to avoid even the semblance of egotism, pressed us to leave out whatever touched himself; but we risk disobedience, and feel assured our readers will defend us in doing seeming violence to the delicacy of one who deserves all his beloved correspondent puts down by way of praise and blessing :

“NAPLES, March 10th, 1846.

“MY DEAR SILLIMAN :

. . . “I have written you but two letters. I admit I owed more to the kind and noble friend whose attachment has been so often and so truly proved; but you cannot imagine how absorbing is this sight-seeing, in which the last nine months have been spent. I could scarcely find time for the first of earthly duties—writing to my father. I have come home at night dizzy, half crazy with excitement and fatigue. At Rome, after seeing marbles and mosaics and tables and pictures and sculpture in half a dozen palaces of a morning, it seemed to me that my head had been transformed into a furniture-shop. Then the cares and troubles of travelling are greater than I fancied. But I have had a noble tour, and looking back at it now through all its expanse, the part of it devoted to Italy seems to me the most exquisite. Of Naples I have in fact seen nothing. We arrived here the day before yesterday; and after two months of heavenly weather, of skies bright and cloudless, and air balmy and soft as our loveliest May, it has taken to raining with desperation and mists, shrouding the celebrated landscape. Vesuvius is utterly hid.

“I passed five hours this morning in the Royal Museum and, even after the Vatican, it appears to me of exceeding interest. I saw the secret apartment set apart for the horrors dug out of Pompeii. On the whole, I am rather disappointed with this secret room. It is gross enough in all conscience; but the collection is not extensive, and the workmanship is not so choice as I had anticipated.

"We passed near three weeks in Rome. By the way, to go back, our whole journey from Paris has been enchanting. We left the fogs and cold of France at Chalons-sur-Saone, where I caught a sight of Mont Blanc, more than a hundred miles off; then to Lyons, a most picturesque and remarkable city; thence down the noble Rhone, which almost rivals the Rhine, to Avignon. We here touched the tombs of Roman power, and first felt the beautiful climate of Southern France. One day was spent at the fountain of Vaucluse in the garden of Petrarch. Another day we devoted to the exquisite architecture remaining at Nismes. At Marseilles I first caught sight of the Mediterranean, and felt, albeit a cynical old lawyer, like the Greeks of Zenophon, when I saw its deep blue expanse and the margin of dazzling breakers on its shore. From Marseilles to Nice was full of interest. Tonlon, the great naval arsenal of France, occupied a day. We stopped at Cannes, so beautiful that the English (Lord Brougham among them) select it for their villas; at Frejus, celebrated in Napoleon's history; and finally rested in gay and bright Nice, where orange-trees, full of fruit, and palm-trees and light painted houses and gay costumes and light-hearted people announced our advent to the 'radiant peninsula.' From Nice to Genoa we travelled by the Corniche road, which winds around the Maritime Alps, curling around every promontory and headland, now climbing dizzy heights amid Alpine scenery, where snow and ice are around you, and now seeking the very beach where the waves of the Mediterranean lave your horse's feet, visiting town and city in its course, all white and sparkling in the sun (I confess the charm is dissipated when you enter them), and closing at last at 'Geneva la Superba,' one of the most beautiful cities that travellers ever entered. From Genoa we came to Rome, principally by water, stopping to visit old Pisa. ‡

"But Rome—old Rome—modern Rome—Rome of the Cæsars and Rome of the Popes—Oh! Bennie, child of sorrow! how can I mention it to you? You would have laughed at me one bright morning in February, when, with two maps and Murray's guide-book (which furnishes you with learning free, gratis, for nothing) and Eustace's Travels, I took my seat, on the Senator's Tower, on

Capitol Hill and studied out the localities. And you might have laughed your fill; I should never have perceived it. I was gazing at the Sabine hills. I was marking the course of the yellow Tiber. I was making out the faint outline of the Volscian mountains; admiring the purple color of the Alban Mount; counting the seven hills of ancient Rome; looking down on the broken shafts and fractured capital and mouldering arch and decaying pillars of the Forum beneath my feet, while, on my left, the domes and towers and belfries of the modern city filled the scene until the hill of Janiculum and the graceful dome of the Vatican barred the vision. Never shall I forget the strong excitement of that moment.

"I have seen very little of men and great folk in Italy. We were presented to the Pope, in company with some thirty others. There was nothing particularly impressive in the affair. He seemed to me a good, kind-hearted old man, inspiring very much the same feeling which several good old Presbyterian clergymen have done with me—something like your old relative, whose horse so closely resembled that described by Job—that is, if you have correctly described his conversation, which I always doubted, for what comic genius was ever accurate in telling a good story?

"I am arrested here by . . . who insists on the pleasure of adding a postscript. So *'au revoir'* in time.

"Ever yours,

"W. KENT."

"GLASGOW, July 1st, 1845.

"MY DEAR SILLIMAN :

"I meant to write to you before, but in travelling you have really very little time on your hands. I received your letter before I left London and most welcome indeed it was. Pray persevere and in the same style too. Every scrap of personal history and anecdote of people in New York—even of those whom I never thought of while at home—becomes intensely interesting when the ocean divides you from your home.

"Well, I have seen a good deal of John Bull and something of his brother Sawney. A fortnight in London and three weeks in

travelling the country have given me something of an idea of 'the inviolate island of the brave and free.' If I were now to return, I should be abundantly compensated for the trouble of the voyage. Why do you not do this? Instead of a month idly and foolishly passed at Saratoga, the addition of another month and a couple of hundred dollars, would enable you to see a great deal of this wonderful land, and send you back with a memory stored for life with delightful recollections.

"I have seen some men of note. I have heard Sir Robert Peel speak half-a-dozen times. He is a mild, persuasive, gentlemanly speaker, not manifesting great intellectual force, though it would be rash to deny it to him, after his long and successful career. I have heard Palmerston, Shiel, Lord John Russell, Captain Napier, Roebuck, Sir Robert Inglis, Tom Duncombe; and, in the Lords, Brougham, Stanley, Normanby, Clanrickarde and Campbell. There was nothing very striking in any of them, except Roebuck. They all spoke well, sensibly, and with very good manner; but there was nothing approaching to what is commonly called eloquence with us, though I have long been disposed to think this same eloquence was a humbug and that the orators of other times, from Cicero to Burke, must have been very considerable bores. Roebuck is a very clever man. I heard him attack an Irish member, Smith O'Brien, and he evinced the power and fierceness of a Mohawk. He is a little fellow, with a pale face and aquiline nose, speaking very deliberately and coolly and piercing like a rapier. I have seen the *old Duke*. You are inclined to laugh when you first see him, he is so like the caricatures. There he sits crouching down on the bench as if sitting on the small of his back, with his hat drawn down over his forehead to the very edge of his nose. His position in this country is very striking. A lady told me that in society he receives the same honors that are paid to the Royal family, and the ladies rise when he enters the room. His mind is said to be vigorous as ever. The aspect of the House of Commons is any thing but imposing. One thing would please you: almost every one in it seems to be bald. I never saw so many bare sconces in my life in the same number. In the House of Lords I

looked in vain for the 'air noble' and the Norman blood. There were some handsome men in it, and some tall ones, but there were many ugly men there and several as insignificant little old fellows as you would meet in a Presbyterian vestry-room at home. There is, however, a distinction visible between the gentlemen you meet at the West End and the Londoners proper. About 5 P. M., in Pall Mall you will see crowds of tall, handsome fellows, riding and talking, dressed plainly, but with exquisite neatness: while the English in general are, I think, shorter and less athletic than our countrymen. The women are certainly taller and larger than, and, I think, complexion and plumpness considered, full as handsome as the American women. They want the delicate features and grace of our females.

"I have heard but little of the lawyers. I heard Fitzroy Kelly, who (now that Sir W. Follett is dead) is their crack speaker, argue a case; and I heard Mr. Bethell. Nothing extraordinary in the speeches, though delivered in the House of Lords. But it is quite premature and presumptive in me to give any opinion yet of the merits of the bar here. The judges are a wise and social-looking set of men. Lord Denman is tall, dignified and handsome. Mr. Justice Parke is a short man, with a black, keen eye and an advice-giving countenance. Old Sir Nicholas Tindal has eyes which look as if there were spectacle marks around them, and has a mild, owl-like look. Sir Lancelot Shadwell has a deep-red cheek and sleepy black eye. The lawyers, in their wigs, do not look handsome. Mind, this applies only to horse-hair wigs. I admire their chambers in the inns of court. Their chambers mean a complete suite of rooms—a library, parlor, bedrooms, and all the appurtenances for domestic life; and therein the bachelors live. These inns of court have a quiet and retired air, just out of the surging tides of population which foam along the Strand. The lawyers' libraries are large, but not extraordinarily so. Here the barristers live, communicating only with the solicitors, rarely seeing their clients; and receiving their fees from the solicitors: From what I learn, a lawyer in full practice must pore over books and fret his gizzard about as much as he does in New York, except

they have the long vacation—a most excellent invention, which their pale-faced and care-worn brothers in America ought to adopt. The Temple is a curiosity. The Temple Church is a beautiful affair indeed. It has been restored at great expense. On the floor lie the stone effigies of the old Templars, buried there at a period whereof the memory of man gives no account. What would those grim old chaps in chain armor and long swords, who could not read or write probably, say, if in the flesh, to their chattering, gowned and periwig-pated successors? In Lincoln's Inn, the chancery barristers do most resort. I have formed acquaintances with two or three barristers, very accomplished fellows too. At breakfast, one morning, a discussion arose as to a Greek word and Homer was hunted up and the discussion waxed warm. I wish you had been there, though, had you been present, I could not have retained the air of complacent knowledge which I endeavored to assume. Devil a word did I speak.

“In London I have seen a little of the two extremes. I have seen Stafford House more splendid than the Royal palaces, and talked with the Duchess of Sutherland. To be sure the conversation was mighty short. On the other hand, I spent a night in rambling, with a police officer, through the dens of misery and infamy, such as Dante, in his imagination of Hell, never conceived of. London is interesting beyond all expression. It is a magnificent city. At the West End, you stand in silent admiration at the endless rows of palace-like houses, parks, club-houses, shops; and indeed everywhere the accumulation of wealth strikes you with amazement. It is admirably well ordered. The police, though unobtrusive and composed of a few blue-coated unarmed men, is omnipresent and all effective. In the cursedest den of iniquity I visited, I was assured and felt convinced that personal danger was not to be apprehended. The whole city is far cleaner than New York, and incomparably better paved, lighted and managed. The country in England, oh how beautiful it is! Soft, quiet, tranquil, verdant beyond any thing in America, well-wooded, each field set in a frame of green hawthorn hedges neatly trimmed, gently undulating, full of cottages neatly thatched, with a succession of

gentleman's seats and occasionally a castle, nothing can be more exquisite! There may be, there must be poverty and misery, but you do not see them. The poor operative, the papers say, even now is starving in some sections. But to the traveller, every thing is fair and beautiful, though perhaps the landscape is tame to one accustomed to the rough glades, the craggy hills, and unpruned forests of America. Nature with us is on a far grander scale certainly.

"I am writing, you see, at Glasgow, having just made the excursion through Loch Katrine and the scenery of the Lady of the Lake. Poor Walter Scott, how his genius has illumined his country! One of the most melancholy hours I ever spent was at his grave in Dryburgh Abbey. It was in the evening when we crossed the Tweed, wading through the water, and reached the old ruined Abbey. The grass and ivy were damp with dew and the silence and solitude of the spot almost appalled us. Under an arch, isolated by the falling of the roof from the body of the Abbey, in what is called St. Mary's aisle, is the grave of the mighty minstrel. No stone, no mark, not even turf is on it. It lies there a naked, cold mound of earth.

"Abbotsford is almost equally melancholy. It is uninhabited, except by a housekeeper. We wandered through it—the creation, as it is, almost equally with Marmion, of his genius—gazed on the books, the pictures, the armor, the thousand curiosities his taste collected, until, I can say without affectation, my heart swelled and my eyes filled with tears.

"To-morrow, we go south to London, and thence to the Continent. I will write occasionally, but I cannot promise to be a regular correspondent. You cannot imagine, till you attempt it, how difficult it is to write while incessantly travelling.

"Remember me to all my law friends. Tell Charles O'Connor for me that much of my pleasure in London was derived from the attention of his relative, the O'Connor Don.

"Go up often and see my father and mother. My heart swells when I think of them.

"Good-bye. God bless you.

"W. K."

The next letter was written under sadly different circumstances. He went from New York in the spring of 1860 to the southwest, in hope of expelling the disease of which he died the January following. Sick, enfeebled, sad as Mr. Kent was, yet, "I am told," said the friend who allowed us the valuable use of these letters, "that on the boats descending the Mississippi, and at the hotels, wherever he was, the magic and fascination of his simple manner and delightful conversation, kept him constantly surrounded by the passengers and travellers, without any previous acquaintance with them. He never sought, but seemed always to incur the attention, admiration and love of all who came near him."

"ST. CHARLES HOTEL, NEW ORLEANS, April 20, 1860.

"MY DEAR SILLIMAN :

"I know it will be agreeable to you to receive a line from your dilapidated friend. I am sure that you deserve any return I can make for your kindness and sympathy. My heart swells when I think of your kindness. To appreciate it, you must be placed in the condition in which I was, from which God long preserve you! How kindly Morton and his brother behaved! and your good mother too. Really it has been no inadequate compensation for the hours of weakness and despondency through which I have passed, to find myself surrounded by friends so generous and affectionate.

"You will allow me to be a little more egotistical in speaking of myself. I have borne the journey pretty well, having now travelled (in all the windings of the river) over two thousand miles. I am still feeble, for I have been dreadfully shaken, but my symptoms are better. My distressing shortness of breath has left me, and I crawl along, a lame duck indeed, but without positive discomfort. To-morrow I go to Galveston, and then, I think, I shall return to New York *via* New Orleans and Cuba. You will see me, I expect, about the 10th of May, and, I trust, in a state of health, not robust, that I do not anticipate, but improved and affording ground of hope for the future.

"We went from Philadelphia, over the Alleghanies, to Pitts-

burg, and thence, by rail, to Cincinnati and Louisville. At Louisville we took berths in a splendid steamer for New Orleans and were a whole week on the mighty, sublime, most monotonous of rivers. I never travelled more comfortably, nor with more civil and courteous fellow-passengers; and to the least observing of travellers, this slow passage through the corn region, the cotton region, and finally the sugar region of this astonishing country is fraught with interest. What a river! We entered the Mississippi at noonday, and saw the junction of the great Ohio, then full of water, with the still greater Mississippi 'coming down three thousand miles among the savages.' Dull must that nature be that can see this point without emotion.

"We find the weather in New Orleans warm as our August. I am in summer-clothes, with mosquitoes swarming around and perspiration pouring. Green peas have been antiquated; asparagus has passed into seed; but we are revelling on bananas and oranges. We go this afternoon to the battle-field. How it would please you to see the place where your English enemies were licked! Ah, dear Ben, if I have ever been pettish with you about your prejudices against good John Bull, I apologize for every thing. Your hostility is reserved for Utopian foes, you have nothing but generosity, and sympathy and love for actual friends. God bless you!

"And now, dear Silliman, give my affectionate thanks to your mother, and to Quincy and Hamilton Morton, and believe me,

"Ever your attached friend,

"WILLIAM KENT."

When Judge William Kent was appointed Professor of the Law of Persons and Personal Property in the University of the City of New York, he declaimed an inaugural address on the Rise and Progress of Commercial Law, and we may well be pardoned in giving some extracts, for they are beautifully characteristic of the general gracefulness of his mind and his style. They breathe of the scholar, the gentleman: (After referring to the sturdy, honest and invincible Anglo-Saxon character of Sir John Holt)

"To him, and men like him, had been committed the noble task of administering and defending the common law, the law of liberty; but of him, or men like him, could not be required the lofty office of adapting the jurisprudence of his country to the mighty revolution of trade and property and of enriching the laws of England by the infusion of most that was valuable in the legal systems of the commercial world. This national duty devolved upon genius equal to its performance, upon him who is the pride and glory of our profession, at whose cradle, it would seem, each benignant spirit brought its offering and the spirit of malevolence came not; whose poetic genius the great satirist of the age had likened to that of the sweetest and most imaginative of the Roman bards; whose social talents the same poet had described in the couplet:

' — Equal the injured to defend,
To charm the mistress or to fix the friend ;'

who at the Bar rose to easy supremacy and in Parliament found but one rival, and that one Chatham; and whose labors on the bench cheer the student as he turns from the narrow pedantries of his predecessors and the dull commonplaces of succeeding times to the persuasive eloquence, the varied learning and liberal philosophy of William Murray, Earl of Mansfield."

He closes his oration thus: "The physical grandeur of our country is foretold, not merely by national pride or excited imagination, but by the coldest reason, appealing to the history of the past and pointing to the course of nature. The difficulties and embarrassments of commerce, which momentarily afflict us, sink into undiscoverable trifles, when we reflect on the boundless sources of national wealth, in the energies, not merely of a city, or a State, or a nation, but of a *continent*, teeming with fertility throughout its long succession of plains and prairies—rich in every element of beauty and plenty that can be lavished from the cornucopia of nature. Doubts may be entertained of the political condition of our republic; fears may be felt for its moral or religious future; but neither doubt nor fear can find place in our speculations on the coming opulence and power of America. Its destinies may be fore-

told in language with which a traveller on the head-waters of its mightiest river of the West might describe its appointed course:—there may be eddies and sinuosities in its current;—there may be rapids and cataracts in its descent; but its course will be onward, deepening, widening, swelling, till covered with the treasures of a continent, under the proud title of '*Father of Waters*,' it shall roll its multitudinous waves to the confluence with the ocean!

“May we weigh the responsibility which in bestowing such boundless prosperity Providence has, with it, imposed on those who are to wield and control our political and legal institutions. And when our metropolis shall become the great participant of the general opulence, be it our effort to preserve in the vast transactions of its mart and exchange those maxims of equity and wisdom, which distant ages united to collect, and which will cast over her brighter splendor than if the concentrated commerce of earth shall cover her with a robe of imperial richness, which may shame ‘the woof of Ormus and the purple of Tyre!’”

Our readers will be with us when we say that Dr. Johnson’s definition of a perfect style of writing, namely, “proper words in proper places,” applied emphatically to the compositions of Judge William Kent.

The author heard the following from his friend and brother in the law, Mr. Benjamin D. Silliman, before it found its way into the *New York Times* (May 20, 1866), written thus (there) by Mr. Thurlow Weed, in a sketch of members of the Legislature of New York:

“Samuel B. Ruggles, then a young man with bright prospects and high cultivation, was imbued deeply with the spirit of progress, and an-enthusiastic Erie Canal champion. His canal reports in the House, and afterward as a Canal Commissioner, constitute a valuable portion of the archives of the State. But with all his talent and genius, Mr. Ruggles was no speaker and could not, when assailed, as he was frequently, defend himself. Mr. Benjamin F. Silliman, then a member from Brooklyn, in a letter to Judge William Kent, alluded to the fact that when Mr. Ruggles was pitched into, rough-shod, by Abijah Mann, he could not say a word for himself, ‘sitting dumb before his shearers.’”

"Judge Kent, in reply, said: 'It is too bad that "Samival" (Mr. Ruggles) cannot pay back blow for blow, when he gets in debate. But "Benjie," *you* must speak for him, as a friend like *you* did, in a memorable case reported in the Book of Numbers, *xxii.* 28, 29, 30.'

"Thus the joke was turned upon 'Benjie,' but we all had a good laugh over it. Mr. Silliman is now United States District-Attorney, and, as ever, 'the right man in the right place.' Mr. Ruggles goes on his mission of progress, sometimes practically—sometimes 'seeing visions,' but always with laudable intentions."

The beautiful letters we have given show how William Kent and Benjamin D. Silliman were most intimate. The former could say and write things charmingly pointed and yet fringe them with all the innocent pleasure and fun of a child; while Mr. Silliman, quite as estimable, could take jokes and shake them off like dew-drops.

The living Marcus was worthy of the love and affection of the now dead Portius.

"—the friendships of the world are oft
Confederates in vice, or leagues of pleasure;
Ours has severest virtue for its basis—
And such a friendship ends not but by death."

While Mr. Eaton and Judge William Kent were partners, they had a cause on a day-calendar and it was understood that Mr. Eaton should try it; but they went to court together. A brother lawyer said, "What possible business, Kent, have you here, if Eaton is to try the cause?"

"Oh!" answered he, "I don't believe in Eaton's case, but I shall sit by him and look dignified and virtuous."

During the time that William Kent was a judge of the Supreme Court, it was the absurd custom, in criminal cases, for two aldermen to sit on the bench; and they could, by coalescing, control the extent of a proper verdict. Some time in the winter of 1843, James Gordon Bennett, the editor of the New York Herald, was indicted and convicted for two libels on the Court of Sessions of New York

city. The libels were of a tenor tending to throw the greatest contempt upon the officers and proceedings of that court, and to make their administration of criminal justice a laughing-stock and a subject for general derision. They were not mere single, separate attacks for the first time upon the court, but they had been preceded by a long series of abusive and contemptuous articles, such as finally to compel the court to take some notice of them in self-defence. Public expectation was a good deal excited to know what sentence Bennett would get before Judge Kent, to whose jurisdiction the case had been transferred. When the punishment came to be announced, to the surprise of every one, Judge Kent stated that his own judgment had been overruled by his colleagues and that the sentence would only be to pay a fine of three hundred and fifty dollars. When this was announced, Bennett coolly drew his check for the amount and left the court with the air of a man well satisfied to pay his reckoning for his entertainment.

A gentleman of New York, now a judge of the Supreme Court of the State, and of high and otherwise honorable standing, is rather ornate in his manner and unconsciously carries it into church. In responses, following the preacher in prayers and belief, he was heard above the general congregation and, yet, did not, from the fervency of his devotion, keep time with the many—indeed, being more deliberate, he was slower and his words came, echo-like, after others. William Kent used to sit in a pew at the back of him. On coming out of church one day, Kent said: "Brother Henry, why is it you 'descend into hell' several minutes after the rest of the congregation?"

William Kent met the same gentleman in chambers, when the latter had on a most elaborately patterned and showy waistcoat.

"Now," said Kent, "I believe in predestination."

"Why?"

"Because I am sure it was preordained that Brother Henry and this remarkable waistcoat should one day come together."

He was a martyr to the gout. During the greater part of a year he was upon his back in bed, suffering fearfully. But this he bore bravely and quietly. He told a friend, however, that while

thus prostrate he cried bitterly. because he was useless to his fellow-men.

Judge Kent, while moving painfully in the streets of New York, was met by Mr. P. T. R., a brother of the bar and a brother sufferer from gout. They condoled with each other. Now, the latter, although enjoying life in a gentlemanly way, yet might have had cause, from incaution in sporting and fishing, for his pain; whereas our Kent was always remarkably abstemious. Mr. P. T. R. very good-naturedly declared that the judge was to be pitied, for he had effects without cause, whereas, for his own part, he had had value received.

William Kent, in the latter years of his life, was in the habit of sitting as referee on the trial of causes. He would take accurate notes of the testimony, and frequently, during the long arguments of counsel, amuse himself, perhaps unconsciously, with sketching on paper, or writing rhymes.

At this period he had a charming house on the banks of the Hudson, where he passed all the time he could spare from professional pursuits. A friend relates that, one fine summer's day, he entered the judge's office in New York just as he had closed a reference on which the advocates had been summing up with tedious speeches. Casting his eye on one of these scraps of paper, supposed to be the judge's minutes, he read among other singular memoranda, the following lines :

"I am thinking of sunshine, flowers and birds ;
While these lawyers are giving me words, words, words."

The editor of the Knickerbocker Magazine thus prettily, and yet with manly heart, remarked on the death of Judge William Kent:

"It will already have been seen, by the thousands of readers of the widely-disseminated sheets of our friends of the daily metropolitan press, how universally have been re-echoed the obituary honors which have been heaped upon the memory of the late Judge William Kent. Like many of our younger contemporaries of the press, whose names are upon the nib of our pen as we write, our acquaintance with Mr. Kent was established at the dinner given

to Mr. Dickens at the Astor House, by the Novelties Club of New York—‘one of the most pleasant and intellectual entertainments which he had in America,’ as he himself wrote soon after in a note now before us. Judge William Kent presided; and, from the first, every member and every guest of the club saw that he was, after all, at least the presiding genius of the occasion. Nothing could have been more unaffected, self-possessed and entirely charming than his manner. Few who knew him will ever forget the mellow low tones of his voice and the winsomeness of the tranquil smiles which always illustrated his varied, and especially his incidental humorous conversation. We had the pleasure to sit on the left and next to the president; and can well believe that what Mr. Benjamin D. Silliman said of him, in his admirable eulogy before the New York Bar, was eminently true: he ‘had a remarkable memory—he forgot nothing.’ And such, we think, must have been the impression of our guest, for not a character previously drawn by Mr. Dickens, however humble, but was, in all its characteristics, as familiar to and as well understood by him as by the author himself. Our impression formed of Judge Kent, at this time, was confirmed and heightened by all that was afterwards known of him; and it was our good fortune to meet him often in society and receive his literary counsel and on one or two occasions assistance from his polished pen.

“It has been well said of him that as a *belles-lettres* scholar he had few equals in this country. His reading was not limited by the ordinarily wise rule *non multa sed multum*, but it was both *multa et multum*. Whatever he studied he studied thoroughly. He read every thing and he remembered every thing. What he read did not remain with him a mere accumulation of knowledge and ideas, but became part of his mental nature, storing and strengthening his mind without impairing his originality. Having often witnessed the dignity, urbanity and surpassing gentleness of Judge Kent’s bearing upon the bench in our Court of Oyer and Terminer, we can fully concur in the following passage from a tribute to his revered memory by his brothers of our metropolitan Bar:

““In contemplating the character of our deceased brother, we most naturally and fondly revert to those qualities of his mind and heart which graced his personal demeanor and intercourse—to his ever-cheerful temper, his warm affections and genial sympathies, his fresh and playful spirit and to the rare, varied and extensive literary and classical acquirements which he possessed in such richness and held in such ever-ready command.

““While thus mindful of the personal attractions now lost to us forever, we should not omit to testify our high appreciation of the professional learning, the clear and persuasive method of reasoning, the nice power of discrimination, unvarying industry, strict sense of justice, inflexible integrity and great practical wisdom which illustrated and adorned his career as a leading member of the Bar and as a distinguished judge of this circuit, reflecting additional honor upon the great name he inherited and placing his memory justly by the side of his illustrious father.’

“His death was one of peace, as his life had been of uprightness. He had so lived and so believed that, when the time had come for him to walk through the dark valley, he feared no evil, but leaned on the rod and the staff which alone can support man in that dread hour. *Tread lightly on his ashes ye men of genius, for he was your kinsman; weed clean his grave, ye men of goodness, for he was your brother.* Such was the beautiful invocation uttered by the deceased upon the death of Mr. Butler. How truly and fondly will arise the same aspiration for his friend and brother who has now joined him in the better land.”

AARON BURR.

In this work we have eschewed biography; and it is well: for the labor would sometimes be unpleasant to author and unpalatable to reader. We are about to touch on some traits of Aaron Burr—little more.

Indeed, the culminating point in Burr's life, his duel, seems to have shot away all before, which might have been pleasant to record. Circumstances prior are sterile. We have not met with

any one who can remember a blade of grass, let alone a flower there. The world, so far as they have cared to think of Aaron Burr, start from the period of the fatal rencontre, from the dark hour when by his hand fell "the model of eloquence and the most fascinating of orators"—from the time when Aaron Burr became a fugitive.

In the whole of the United States, Mr. Burr was, probably, the only man who did not feel how great an injury he had done to country, relatives, friends and admirers by killing one who, in the lofty language of Daniel Webster at a banquet in New York, "Smote the rock of national resources and abundant streams of revenue gushed forth. He touched the dead corpse of the public credit and it sprung upon its feet. The fabled birth of Minerva from the brain of Jove was hardly more sudden or more perfect than the financial system of the United States as it burst forth from the conception of Alexander Hamilton."

In reference to these remarks, we find the following in Harper's Magazine for December, '52:

" ' You could have heard,' remarks a distinguished friend and correspondent of the writer hereof, who had the pleasure of sitting very near Mr. Webster on the occasion alluded to, ' you could have heard the falling of a pin anywhere in the crowded assemblage while Mr. Webster was speaking. When he came to advert to Hamilton's influence in creating and establishing a system of public credit, at a time when it was so much needed, he illustrated his subject with that memorable figure, " He smote the rock of the national resources and abundant streams of revenue gushed forth;" and as Mr. Webster said this, he brought his right hand down upon the table to enforce the simile; and in so doing, he happened to hit a wine-glass which broke and slightly cut his hand—and as the blood oozed from the wound, he slowly wrapped a white napkin around it and, then, finished the figure: " He touched the dead corpse of the public credit and it rose upon its feet." ' "

The Rev. Dr. Mason, of the Scotch Presbyterian Church in New York, had the credit of saying good things. Hamilton's

mind, he observed, was "like the proboscis of an elephant, it could tear up the mightiest oak and dissect the filaments of a lily."

Burr's duel was on the 11th of July, 1804. A few days afterwards, indictments for murder were found against him in the States of New York and New Jersey. It is said he went in disguise from Perth Amboy to Philadelphia, and there renewed proposals of marriage to a young lady—at the same time writing thus to his daughter:

"If any male friend of yours should be dying of *ennui*, recommend him to engage in a duel and a courtship at the same time."

Does not this show we were right in saying that, of all the people in the United States, Aaron Burr was the only man who did not feel the great injury he had done?

And, look at this:

"General Hamilton is just dead," said one to Burr.

"Ah!" was the reply, "did he suffer much pain?"

"Yes."

"I regret it: it was my purpose to have spared him needless pain."

The following anecdote was related to a party of gentlemen by Judge Rowan of Kentucky. The fact in it was remembered by him when Burr, on his arraignment for high treason, asked him to be his advocate and caused Rowan to decline "the very great honor." We give it in the judge's own words: "It was at that period in our history when the Confederation, having cast off the iron hoop of war, seemed to have no other bond of strength. Men's minds were unsettled; there was no gravitation of principle, no unity of purpose, no centre of motion. Patriotism had expended its enthusiasm, liberty had lost its vitality, and forbearance its subordination. Burr believed that the staggering elements would fall into confusion, writhe for a season in anarchy and emerge in monarchy. He believed that the fermentation, if allowed to take its course, would froth and effervesce and rectify, by crystalizing, the desire to put Washington on the throne. He thought, however, that there was a shorter way to stability by intrigue; by the conjuration of adverse influences; a way less sinuous to his own advancement. He believed that there was no man without his

price, while his acute discernment told him that Hamilton's was a character which even his own partisans would turn to in despair and prefer it to his, in testing an experiment or trying a theory. He had a proposition to make to General Hamilton: it was patriotic or it was traitorous; it was full of meaning, overreaching, overreaching the words, balancing the ambiguity nicely, but searching enough to find the weakness, had it existed. He knew he would be understood, without being committed; answered, without being betrayed. There was treason in it; but it was in the occasion, the manner, the words if you please; and yet it was nowhere, if he chose to disclaim it. He had a proposition to make, but he would not write it down. Mark the man. He could not be prevailed on to put it upon paper. He gave his friend the words and the emphasis, and made him repeat both, until they told right to his own ear. These were the exact terms: 'Colonel Burr presents his compliments to General Hamilton: will General H. seize the present opportunity to give a stable government to his country and provide for his friends?' General Hamilton did not hesitate a moment; this was his answer: 'General Hamilton presents, in return, his compliments to Colonel Burr: Colonel B. thinks General H. ambitious: he is right. General H. is one of the most ambitious of men; but his whole ambition is to deserve well of his country.' There is an answer," continued Judge Rowan, "which would have deified a Roman; there is the first of the offences which he expiated at Weehawken." (25 vol. of New York Knickerbocker Magazine, 256.)

Mr. Anthon had a bust of Alexander Hamilton in his office; and Mr. A., while any one was consulting with or talking to him, had a trick of making this bust the point of sight or rest for his eyes. Aaron Burr and he had a consultation. Mr. Anthon's eyes, involuntarily, were upon the bust; but, in a moment, he remembered himself and withdrew his gaze. Burr, however, caught Anthon's consciousness; and quietly, slowly, pointing his long, thin finger towards it, said: "He may thank me, sir: I made him a great man." We mention this anecdote to show the cold-blooded egotism of Burr.

There used to be a report that, after he had challenged Hamilton, he was in the constant habit of practising with a pistol in his garden; and this was considered improper and as savoring of a premeditation to kill. But, he was well known as a good shot. When Burr was living at Richmond Hill, in the City of New York, he had a colored servant called Harry; and after dinner-parties, which the Colonel was in the habit of giving, the guests and their host would adjourn to the back piazza and amuse themselves with firing off loaded pistols at apples which Harry was ordered to throw up. This negro told the gentleman who gives this circumstance: "De Colonel would hit 'em almos ebery time, but d'oder gentlemen couldn't hit 'em no whar." (Judge Greenwood's Personal Recollections of Aaron Burr, etc., 6 Historical Magazine, 331.)

By the way, as to his residence at Richmond Hill, New York City, it originally stood on an elevation and was afterwards moved bodily many yards down to low ground; and the author has understood that Burr was the first person who thus, practically and by the use of blocks and rollers, moved a whole house from one site to another.

He had, indeed, the weakness of looking into inventions and was constantly trying experiments. He puzzled his brains for a long time and had models made with a view to get some motive power which would avoid the necessity of using fire or steam, of which Livingston and Fulton then held the monopoly. One great end which he desired to attain in housekeeping was to save fuel, not money. He would spend forty or fifty dollars in contrivances to save five dollars in the value of wood consumed.

Burr's nerve was great. He told the following to ex-Judge Greenwood, who was with him as a student, the same having reference to a time when there was a general controlling hostility against him: He was travelling in the interior of the State of New York and had reached a tavern where he was to stay for the night. Seated at a table in his room and writing, the landlord stated that two young men were below and wished to see him—adding, their manner seemed rather singular. He had already heard

“how two very enthusiastic young gentlemen were upon his track. Taking out and laying his pistols before him, he told the landlord to show them up. They came and as one was about to advance, Burr told him not to approach nearer, and, addressing them, asked:

“What is your business?”

The foremost said, “Are you Colonel Burr?”

“Yes.”

“Well,” said the young man, “we have come to take your life and mean to have it before you go away.”

Upon this Burr, laying his hand upon one of his pistols, responded: “You are brave fellows, are you not, to come here—two of you against one man? Now, if either of you has any courage, come out with me, choose your own distance and I’ll give you a chance of fame. But, if you don’t accept this proposal”—bringing the severest glance of his deep-set, glittering, fascinating eyes to bear upon them—“I’ll take the life of the first who raises his arm.”

They slunk away.

Another instance of his presence of mind: While he was in Paris, he had received a remittance of a considerable amount; and his valet formed a plan to rob him, by coming upon him suddenly with a loaded pistol. Burr, turning suddenly round and instantly recognizing the man, sternly said:

“How dare you come into the room with your hat on?”

The valet, with the custom which had become a part of his nature, raised his arm to take off his hat, when Burr rushed upon and, tripping him up, wrested the pistol from the man and, calling for aid, had him secured. (Judge Greenwood’s Personal Recollections, etc.)

He always insisted he never had any design hostile to the United States and that his sole object was to make himself master of Mexico—adding, that this he would have accomplished if let alone. He chiefly prided himself on his military character. (*Ib.*)

The seal he used was emblematical of the man: a rock in a tempest-tossed ocean. (*Ib.*)

About the year 1814, a man named Mix married an English-

woman. She found herself abandoned in New York by her husband, who was then in the United States navy and leading a profligate life. Her friends had written out to a merchant to be of service to her; and he, speaking of the case to an acquaintance, was advised to go to Colonel Burr, on the belief that he would take up the matter and secure a divorce without fee, only being repaid his outlay. This was done; Burr, so, took the matter in hand; and filed a bill for divorce. It was taken by default and a reference had to Master Arden to take proof. The sole proof was in the testimony of two women of the town. Chancellor Kent would not confirm the Master's finding, insisting that two such witnesses were not sufficient—and the report was sent back. Burr wrote to the Chancellor to know how many women he required, for he had supposed two were sufficient to satisfy any reasonable man.*

In another part of our work, touching of Judge Cowen, we have mentioned how his honor would sometimes confer with his wife before giving decision on a domestic matter:—it has been said that when the above case, wherein Chancellor Kent, in his own mind, first raised a doubt as to how far the uncorroborated evidence of two abandoned women should justify a divorce *a vinculo matrimonii*, he went to "Betsey," as he would affectionately (as Johnson with his "Tetty") call his wife and that she most strenuously gave it as her opinion that no such divorce should be granted through such polluted source, and that this influenced his honor in making the decree he did.

Aaron Burr was first personally known to the author when in years and lingering, rather than practising extensively at the New York Bar. The latter drew many chancery pleadings and depositions and made motions in court for him. Burr had the power—and it was his chief strength—to make use of others. This he could accomplish, but in no vulgar way.

There was no hand-shaking, so common and, from its utter heartlessness, detestable. He charmed, like a snake with a bird,

* This is no doubt the same case as is reported in 1 Johnson's Chancery Reports, 108, 204.

from a distance. On your entering a room where he might be, he, after a most perfect bow, without a word, motioned you to a chair some distance off. Then, quietly fronting and fixing his remarkably glittering, snake-like eyes on you—(his mouth, the whole of his head, with its thin neck, was all snake-like)—he would deliberately raise his right arm and pointing a long, thin, white finger, slowly and under his breath, with lips scarcely open, suggest, in words correctly sentenced, what he wanted. This long, thin, white finger was the only member of his body at all in motion and that was moved in a measured manner; and although Burr was at a distance, you fancied this fleshless finger was feeling and controlling you all over—you felt yourself the fly in the spider's parlor.

His success in the matter of the Eden estate (so well known among lawyers of the State of New York) was mainly owing to the help he got from Mr. Martin Van Buren and to a *mauvais sujet*, sequestered on Long Island, named Griswold, who had been an English lawyer and was very able.

Jefferson says of Burr: "Against Burr personally I never had one hostile sentiment. I never, indeed, thought him an honest, frank-dealing man, but considered him as a crooked gun or other perverted machine, whose aim or shot you could never be sure of."

Still, he could, singly fight a good legal battle. Contemporary with Burr at the New York Bar was Mr. William Slosson, a gentleman who was seldom likely to make a mistake, especially as to the *forum* in which he should bring a suit. There was a celebrated case which grew out of a capture of a vessel by a little French privateer called *The Marengo*. The capture was, no doubt, illegal; but Mr. Slosson commenced an action in trover in the Supreme Court of the State of New York to recover the value of vessel and her cargo. Burr was for the defendant and insisted that the case was one exclusively for admiralty jurisdiction. The plaintiff had a verdict; the defendant's counsel excepted; and the case went up to a general term on bill of exceptions. Here Burr was again beaten, although on a divided bench; but he carried it to the Court for the Correction of Errors. The judgment below was

unanimously reversed, on the main ground which had been originally insisted on by Burr: that no action at common law lies for an illegal capture on the high seas as prize of war; and that jurisdiction, in cases of prize and of every thing incidental and consequential thereto, belongs exclusively to admiralty. (*Hallett v. Novion*, 14 *Johnson's Reports*, 273; reversed in *Novion v. Hallett*, 16 *Ib.* 327.)

The author was with Mr. Burr in his room. On the table were a bottle of water and another of sherry wine. A child of some three years of age toddled in, whereupon he, with a shaky hand, filled a wine-glass with water and another with the wine; and taking one in each hand, offered both to the child, who, instantly, clutched at the glass containing the wine; whereupon he exclaimed, "Only see! how soon the little imp of hell has been able to know the difference between wine and water!" No doubt the color alone decided the child—as it often does with children of larger growth.

Burr was, in a sense, a fire-worshipper. He kept coal or wood burning almost through the whole year. On the author's remarking this, he said that Washington, not liking him (he would have a fling at Washington whenever he could), was in the habit of detailing him to swampy and other malignant grounds, but none of the men under him ever suffered: from the fact that he invariably kept up continuous large fires around and close to them.

One day, standing with him in the then Aldermen's room in the City Hall of New York, while the Chancellor was holding his court there, we pointed to the full-length portrait of Washington, leaning upon the neck of a white horse, painted by Trumbull; and observed, that General Washington—judging from this picture—must have been a remarkably well-proportioned and handsome man. "Sir," responded Burr, "that is no portraiture of Washington. A Colonel Smith, who was considered the handsomest man in the army, stood to Trumbull for that and other figures. Washington, sir, was an ill-made, nap-kneed man."* Immediately after this,

* Others who saw Washington speak in admiration of his personal appearance. Irving quotes from Thatcher, a cotemporary chronicler,

we remarked that it was a pity Mr. Burr, from his former position and knowing as he must so much of the men and the movements around the Revolution, should not publish his reminiscences.

"Sir," he responded, "you may have heard I once had a daughter. Years ago I got together, with a view to publication and the truth, letters, documents, memoranda, all carefully labeled, tied up and put in many tin boxes. These I intrusted to my daughter. They were placed on board of ship with her. Sir, my daughter was never heard of afterwards." A pause and he observed, "It is perhaps politically well these documents were lost, for they would have detailed things which would falsify many matters now supposed to be gratifying national facts."

Tradition says much of Aaron Burr's fascinating conversational powers. The following is somewhat in point. Mr. and Mrs. Frederick A. Tallmadge were on board an Albany steamer, as was Burr; and he was introduced by Mr. Tallmadge to his wife. Burr sat himself down near to the latter, while a woman in Quakeress

who says: "His excellency was on horseback, in company with several military gentlemen. It was not difficult to distinguish him from all others. He is tall and well-proportioned and his personal appearance truly noble and majestic." And also refers to what Mrs. John Adams wrote to her husband: "Dignity, ease and complacency, the gentleman and the soldier, look agreeably blended in him. Modesty marks every line and feature of his face. Those lines of Dryden instantly occurred to me:

"Mark his majestic fabric! He's a temple
Sacred by birth and built by hands divine;
His soul's the deity that lodges there;
Nor is the pile unworthy of the God!"

Thus far, the outward man. "Suppose," says Southwold Smith, "it is the will of the Deity to save a people in love with liberty and worthy because capable of enjoying it from oppression and to exhibit to the world an example of what the weak, who are virtuous and united, may effect against the strong, who are corrupt and tyrannical: in the very season when he is needed he forms and in the very station where his presence is necessary, he places a Washington."

garb sat immediately next to Mrs. Tallmadge. After a time, Burr arose and went to another part of the boat with Mr. Tallmadge. Whereupon the Quakeress thus addressed Mrs. Tallmadge:

"Pray, friend, who was it thou were't talking to? I could not but overhear and his remarks were so interesting that I make free to ask thee who he is?"

"That," answered Mrs. Tallmadge, "was Mr. Aaron Burr."

"What! wicked Aaron?"

"Yes, wicked Aaron."

"Then, if it were wicked Aaron, I am ashamed of myself for listening to him."

Burr had a motion before the bench, then five judges of the Supreme Court sitting, with their backs to the light, in the Senate Chamber in Albany. Spencer, C. J., who never liked Burr, in an abrupt and positive manner, gave him to understand that a rule or maxim existed against the doctrine for which Burr contended.

"I did not know it, your honor."

"Then," said the chief-justice, bringing down his fist with some force out of the darkness, "you *know* it now."

Burr, with his habitual quiet, pointed manner and impudence, putting his spectacles upon his forehead: "I *hear* it now, sir."

On a similar occasion and in like manner, he was again snubbed, before the full bench, by the same judge—who did not seem disposed to give any satisfactory reason for his views. Burr, seeing that further argument was useless, commenced tying up his papers, saying, as he did so, with rather a rueful countenance: "Then, your honor, I am in the condition of Jeremy Bentham's dog." At this point of the affair, some of the bench seemed desirous to know what was the condition of Jeremy Bentham's dog, but none were ready to ask. At last a lawyer made free:

"Well, Mr. Burr, perhaps the court will permit me to ask you what was the condition of Jeremy Bentham's dog?"

Burr looked fixedly at the presiding justice and in a cutting tone replied:

"He never knew his master's will until he felt his kick."

We are not of those who care to know or to tell what a man eats or what he drinks, for all this is small matter; and yet it helps to mark character. We copy, here, what a professional friend has already put into print. Burr's general diet was simple. His breakfast consisted of a cup of coffee and roll, with the occasional addition of an egg—no meat at this meal; nor, at dinner, which was roasted potatoes, seasoned with salt and butter and, sometimes, thickened milk, called by the Scotch *bonny clabber*, sweetened with sugar; while the last meal of the day merely took in a cup of black tea, with a slice of bread and butter. When he had guests, he used claret and water sweetened with loaf sugar. Spirits he never used. He was, however, an inveterate smoker of cigars and even had them made of an extra length to increase the time of enjoyment in the use and so as to avoid the constant necessity of fresh ones.

He was kind towards children and gentle with animals. He had a favorite cat, which took her resting-place upon the arm of his chair. In driving, he was able to go over much ground in consecutive days, it being his custom to avoid stoppages and to keep his horse at a continued pace of exactly seven miles an hour.

There was one trait illustrative of his general bearing: he never, when on a dusty road, attempted to pass a countryman in a wagon without asking his permission.

Burr told the author of the present work, that when Mr. Reuben Hyde Walworth made, what Burr called "that silly address to the Bar on assuming the duties of office as Chancellor," he (Burr) made it a point to meet him out of court and advise his honor not to publish it.

"Why, Mr. Burr?" asked the Chancellor.

"Because, sir, you therein said you had a very limited knowledge of chancery law and that the solicitation of too partial friends had made you consent to take the chancellorship. Now, sir, the people, if they read this, will exclaim: Then, if you knew you were not qualified, why the devil did you take the office?"

Very many whom Burr touched he seemed to blight. Poor Blennerhasset's history and the death of his beautiful and accom-

plished wife in abject poverty in New York are well known. There was a son, of the same name as his father, Harman Blennerhasset, who became an attorney in the City of New York. He had scarcely any practice; dressed somewhat *outré*; used to be seen in the streets constantly eating gingerbread—indeed, at last, he was never seen there or at crossings and corners, without having in his hands and munching a large piece of gingerbread. And he got in the community and through newspapers the *soubriquet* of The Gingerbread Man.

Burr died childless, helpless, homeless, penniless—almost friendless. He was buried at the foot of the graves of his father and grandfather at Princeton, New Jersey; and for about twenty years no white stone marked his grave. Then was erected an upright marble by a gentleman of New York, relative by the mother's side. There was and still is a romantic story afloat of the monument's having been placed in the night-time and by a stranger, with the addition of some vandal after-injury to it. Professor H. C. Cameron, of Princeton College, writes thus to the author:

"I endeavored, some years since, to correct the ridiculous story about the erection of the monument by an unknown person, its mutilation, etc., but the New York Times did not think it worth while to publish it and the editor was probably right. The whole story, so far as the romantic part is concerned, is a pure fiction. All the persons engaged in its erection are perfectly well known and the mutilation, which consisted in chipping off a small portion of the pedestal, is very slight and was probably done by a thoughtless boy or a curiosity-hunter."

The same courteous and attentive gentleman sent a neat sketch of the monument, with its inscription, of:

"AARON BURR,

Born Feb. 6th, 1756. Died Sept. 14th, 1836.

A Colonel in the army of the Revolution.

Vice-President of the United States, from 1801 to 1805."

Times have fortunately changed in regard to the false code of

seeming honor which upheld a duel. Now, such a thing is a rarity; whereas in New Orleans, during the year 1834, more duels were fought than there were days in the year—fifteen one Sunday morning; and in 1835 there were one hundred and two between the first of January and the end of April.

The eldest son of Alexander Hamilton fell in a duel two years before the father was killed—on the same duelling-ground at Weehawken, opposite New York. The Rev. Hooper Cumming, an eloquent preacher (whose wife met a mysterious drowning death at Passaic Falls), while sermonizing on the death of the elder Hamilton, made a pretty figure of speech: he said the father had fallen into the arms of the son.*

* The Rev. Hooper Cumming lived near to the line of the New York and Erie Railroad. The editor of the New York Knickerbocker Magazine gives the following:

One stormy Sunday evening in autumn, about half-past nine o'clock, when the rain was raining cold and the wind was soughing through the half-denuded trees in front of his mansion, outspoke the great pulpit orator to his dame:

"My dear, we have had two services to-day; we have tried to forget the toil of it; we have endeavored to read; we have essayed to converse, but all of no avail. Fatigue has overcome us both. The wailing of the storm, the labors of the day, all invite us to repose. Suppose we go to bed."

The house was closed; the servants had retired; and they did go to bed—in five minutes both were in dream-land. Presently a loud knock was heard at the door. It was a heavy knock, but to the sleepers whom it aroused, it seemed a visionary rapping; but the next prolonged summons couldn't be mistaken.

"Get up, my dear," said Mrs. Cumming; "the servants are all in bed and asleep and we are close by the door."

"Then up got Hooper Cumming, he,
Up got he in his bed,"

and said to his wife, "Who can it be? I will go and see." And he went.

As he approached the door, at the end of the hall, he heard low conversation. He bore a small night-lamp in his hand, whose light swayed

The antagonist of young Hamilton was George Eaker, a native of Palestine, New York, and a promising young lawyer of the Bar of the City of New York. Politics at the period ran high, and Eaker was a disciple of the Jeffersonian school and of the

to and fro and flickered in the passage. When he reached the door, he said :

"Who is there?"

"It is me, sir, and Biddy."

"I can do nothing for you to-night," said the first colloquist; "it is Sunday night; it is somewhat late; the servants have gone to bed; our dinner was a simple one; we have no cold victuals."

"Don't want any cold victuals; want to be spliced, Biddy and I. I am a sailor; they say I'm a good 'un, too, but I say nothing. Howsumd'-ever, we want to be spliced. I'm off airly in the morning. Will you do it, Captain?"

"You want to be married—is that it?"

"Yes; what d'ye take me for! Didn't I say so? And I want it done now; it will be too late to-morrow."

"Wait a moment," said the clergyman.

Then a fumble was made at the keyhole, and the next moment the candle went out. The key could not be found by the sense of touch; the shivering divine, standing almost *in puris naturalibus*, in the dark, raised the fan-light at the side of the door, bade the twain approach and then and there (it was a brief service) coupled the two for life. He heard a kiss in the dark and then was addressed with :

"Capt'n, I aint goin' to buy a pig in a poke. If Biddy turns out a good craft, you shall get your pay for splicin' us; now mind, I tell you. You'll hear from me again, Capt'n, see if you don't."

The twain departed; and the clergyman went shivering to bed.

About a year after this amusing occurrence, a big box was brought to the reverend pastor's door, of which word was sent to him by the carman who brought it.

"Don't take it in," said the wife; "it's another of those boxes with eleemosynary little books and tracts, which have cost us so much cartage, besides the trouble of distributing them."

But better counsels prevailed. The charges were paid; the box received and opened; and the result was astounding. Instead of books or tracts, it contained the richest and costliest fabrics—a present to the clergyman's wife. It was the wedding-fee of the wandering and now promoted sailor.

Democratic theory of retaining power, as far as possible, in the hands of the people; while young Hamilton and Price, a friend of his, were converts to the strong government theory of Hamilton's father. Eaker had delivered a creditable Fourth of July oration. Soon after this, he escorted a Miss Livingston, to whom rumor said he was engaged, to a theatre. Price and young Hamilton were in an adjoining box and took occasion to say, ironically, some insulting things, about the oration, for Miss Livingston's ear, which Eaker promptly resented. They both challenged him to a duel. He exchanged shots first with Price, because his challenge reached him first; and then with Hamilton, who was killed.

Eaker died of consumption in 1804, and a stone marks his place of burial in the lower end of the ground, Vesey Street side, of St. Paul's Churchyard, New York. (10 N. Y. Historical Magazine, by Dawson, 46.)

Mr. Henry B. Dawson, editor of the Historical Magazine, has given the following interesting original article on the death-place of General Hamilton (vol. 10, No. 7, Supplement, p. 5).

"That General Hamilton and Colonel Burr fought and that the former fell, are very well known; but it is not so well known either where General Hamilton spent the night before the duel, how he reached Weehawken, whither he was taken after his fall or where he died.

"We have found no one who was able to answer these questions, except in general terms—he spent the night at home, and he died at Mr. Bayard's, in Greenwich, it is said; but where was that home, and where was Mr. Bayard's? It is the purpose of this brief paper to examine these questions.

"At the period referred to (July 11, 1804), General Hamilton's business office was at No. 12 Garden Street, now Exchange Place; and his city residence at No. 54 Cedar Street; he had also, we believe, a country house on the Kingsbridge Road, about a mile above Manhattanville, called after the Scottish seat of his assumed ancestors, 'The Grange.'

"It is said, we have no doubt on competent authority, that the

General was at his office throughout the day preceding the fatal duel; and that his intercourse with his clerks was marked by no peculiarity of manner; it is just as evident to us, *that he spent his last night at 'THE GRANGE,' with a portion, at least, of his family, if not with every member of it.*

"We are not insensible of the fact that the General's son and biographer has stated that his father's last night, prior to the duel, was spent at his *city house*, No. 54 Cedar Street, evidently in the absence of his wife; that he pleasantly invited one of his little sons to sleep with him; that he heard the child—possibly the biographer himself—repeat the Lord's Prayer, which his mother had taught him, etc., etc.; but, for reasons which are perfectly satisfactory to ourselves, we prefer to believe that the narrative of the biographer, in these particulars, is entirely incorrect; that the city house of the General was then closed for the summer; that his children, if not his wife, were at 'The Grange;' that he spent his last night, prior to the duel, *at that place*; and that, calling on his way at the doctor's country seat at Bloomingdale, he drove thence to the city, in the morning, on his errand of 'honor.'

"Of this, at least, we have the evidence of Dr. Hosack, the attending surgeon: General Hamilton drove to the wharf at the foot of the Great Kiln Road, now Gansevoort Street, in company with his second, Judge Pendleton, and the surgeon, Dr. David Hosack, who had been mutually agreed on. Leaving the carriage, with orders to await its return, the party took a boat and was rowed to Weehawken, where it arrived at a little before seven in the morning. The Vice-President of the United States, with his second, William P. Van Ness, Esq., agreeably to the terms agreed on, was already on the ground; and both were busily engaged, off, in clearing away the bushes, limbs of trees, like a fair opening' for the purposes of the meeting. Principals in the affair, after the fashion of the times with the Code then governing every 'gentleman' in such cases, duly exchanged salutations; and proceeded to arrange for the meeting—both the choice and the giving of the word, under the Code already

referred to, having fallen by lot to the second of General Hamilton.

"As our readers know, the General fell.

"The dying man, 'to all appearance lifeless,' after a brief examination of his wound, was borne from the field of blood, in the arms of his second and the surgeon; and as they approached the river, the oarsmen assisted them. He was laid on the bottom of the boat, apparently dead; and it was immediately pushed off, heading for the little wharf where the carriage had been left an hour before. While on the river, however, either from the effects of the surgeon's treatment or the fresh air from the water, he rallied sufficiently to speak, and give directions for the transmission of the intelligence to his family; and he appears to have even harbored a hope that the end would be favorable.

"The wharf toward which the boat was heading, as we have said, was at the foot of the Great Kiln Road, now Gansevoort Street, in the City of New York. This, an ordinary country road, afforded a communication with the neighboring city, by way of Greenwich Lane, now straightened and called Greenwich Avenue, and Sandy Lane, which after receiving Greenwich Lane, near the corner of the Sixth Avenue and Eleventh Street, entered Broadway near where Waverley Place now is.

"On the southerly side of the Great Kiln Road, extending from the river to the Greenwich Road, now straightened and called Greenwich Street, was the country-place of Mr. William Bayard, a friend of General Hamilton; and on the present line of Horatio Street, a little below the centre of the block between Greenwich and Washington Streets, stood the fine old mansion which was his residence. It was of wood, with a hall extending from front to rear in its centre; and its fine position, overlooking the noble river which flowed gently at the foot of the neighboring bank, rendered it a conspicuous object in that vicinity.

"When General Hamilton and his party left the wharf, on the morning of the duel, a servant of Mr. Bayard had seen them, and told his master of the circumstances; and the latter, probably acquainted with the causes which had led to the meeting, 'too

well conjectured the fatal errand, and foreboded the dreadful result.' He evidently watched for the return of the party; and as the boat neared the wharf where he was, perceiving that only the surgeon and Judge Pendleton sat up in the stern sheets, 'he clasped his hands in the most violent apprehension.'

"At the request of the surgeon, a cot was brought from the mansion, and the wounded man was removed at once to one of its rooms—it is said, the right-hand front room—and there at two o'clock on Thursday afternoon, the 12th of July, 1804, the day after the duel, he died. The body was subsequently removed to the house of his brother-in-law, John B. Church, No. 25 Robinson Street; whence, on Saturday, the 14th, it was taken to Trinity Churchyard, and buried with military and civic honors.

"A few days since (June 14th), in company with our venerable and honored friend, John Groshon, Esq., we visited the site of the ancient Bayard estate, at the foot of the Great Kiln Road; and in the midst of the busy scenes of that familiar neighborhood—a part of the city in which many years of our boyhood and early manhood were spent—he pointed out to us the well-known old frame dwelling, No. 82 Jane Street, as the ancient residence of William Bayard, and *the death-place of Alexander Hamilton*; confirming from his own recollections the tradition, to the same effect, which was familiar to us more than thirty years ago.

"We knew the old house when a lad, as the property of the late Alexander Knox, Esq. and the home of the late James Wotherspoon, Esq.; but it is now, if we may judge from appearances, the home of more than one family, probably that of several. It is, however, apparently in good order; and notwithstanding the disappearance of the green-house which formerly flanked it on the east, and that of the long row of factory-buildings which, years ago, stood at its western end—both of which have since given place to modern-built dwellings—we could not fail to recognize in the plain but substantial old house a landmark of our early days, as well as one of the few remaining relics of New York in the last century, and one of the most interesting edifices, historically considered, in the United States. "H. B. D."

"MORRISANIA, N. Y., June 15, 1866."

CHANCELLOR SAMUEL JONES.

Chancellor—Judge Samuel Jones was a contrast to some robustious judicial characters. There was no instant decision or hurried conclusions with him. It has been observed of Lord Eldon, and a Master of the Rolls, that from the one you got slow justice and from the other quick injustice. Chancellor Jones may be coupled with the former. And when he did decide, it was introduced by elaborate essay, showing how the whole law justified his decree, although there were many cases in which principles and rules were clear and did not require to be spread out as grounds to uphold.

You would hesitate long before appealing from any decree made by Chancellor Jones.

The minuteness which characterized his honor on the bench was brought by him from the bar. As an advocate, he was known by his thorough preparation. On one occasion, at a term of the Supreme Court of the State, arguments of counsel, which were handed in, were found by the court to have been somewhat carelessly prepared. The Chief-Justice took occasion to rebuke the bar for not having properly prepared their cases, saying they had, thereby, cast too much burden upon the court. Mr. Jones was present. He rose and asked the Chief-Justice if he was included? "No," answered his honor, "No, Mr. Jones, your cases are always well prepared."

Mr. Jones was another illustration of the legislative folly which made sixty years the end of a Chancellor's life.

He, after leaving the "woolsack," became a judge of the Superior Court of the City of New York; ultimately, its Chief-Justice.

And going back to the bar, he argued a cause in the Court of Appeals when he was eighty-four years of age. This was in January, 1853; he died on the twenty-sixth of May following. Mr. Hiram Ketchum, at a bar meeting convened to pay respect to the memory of Judge Jones, thus spoke of this last argument:

"I remember most distinctly the last case which he argued in the Court of Appeals; it was in January last. I happened to be

associated with him. The vigor, the terseness, the learning, the conclusiveness with which he argued that case drew forth the admiration of the bench and of the bar. Never, on any occasion, from his earliest manhood, had he surpassed or could he surpass or could any other man surpass that argument. And I had the satisfaction of knowing how he felt after it was made. No miser ever counted over with more delight the accumulation of years than he experienced when he had the consciousness that the learning accumulated in sixty years was all subject to his command and could be marshalled at his pleasure for attack or for defence. Why, if poverty were necessary to give a man a feeling of that sort at more than eighty years of age, it would be worth while to be poor a whole life."

It may appear strange to many that he, who had nearly all his life earned large professional emoluments, who had received a paternal estate of probably forty thousand dollars, who was never a prodigal, should have found it necessary, at his advanced age, to engage again in the perplexing labors of the bar. To those who knew him it was not strange. Having never felt the want of money or credit, until he was more than sixty years of age, he had not learned to economize, nor had he realized the necessity of laying up a fund for future use. He spent his money as he received it. He was a careless book-keeper, a poor collector, a free giver, an unwary endorser, a tardy applicant for security and, with all his wisdom and intercourse with the world, a credulous listener to speculators, who urged him to adventure his cash or his obligations in their hazards, under the lure of its being his duty to aid in the march of improvement. It is no wonder that such a man, by the time he became eighty years old, should find himself almost destitute of property; but it is a mark of unusual honor to him that he had the fortitude to face the necessity and, relying upon the resources of his learning and talents, endeavor to live, as he had ever done, independently.*

* From a Memoir by S. W. Jones, Esquire, County Judge of Schenectady.

The want of system in his monetary affairs appeared to attach to him in regard to papers. He had no pigeon-hole propriety. There was a sofa in a room in which he would receive lawyers. This sofa and also a table were not only covered, but really piled up with bundles connected with undecided cases. And baskets too were standing about similarly filled. A stranger would have had to completely overturn before he could have hunted out a particular document. But the ex-Chancellor would go to sofa, table or basket and, without the use of eyes or waiting to consider, dive his hand and arm down (we have seen him not unfrequently do this) and bring up what was wanted.

The writer well remembers the time when Mr. Jones was Chancellor; and how he used, day after day, to shut himself within a room in the City Hall, New York, to prepare his decisions—first being furnished with a supply of potatoes, which he would roast in the stove of this room—and on these alone he would, thus shut up, make his dinner.

The late Mr. James Tallmadge told the author how he had felt much aggrieved at something which had been done by Judge Jones; and how, catching the latter alone at chambers, he berated him so as to make him very angry and caused him to exclaim, "I'll commit you, sir; I'll commit you." "You dare not, Judge Jones," retorted Tallmadge; "and another thing, you have not the present power: you are not in court—you are only in chambers." We can hardly understand how Judge Jones could have laid himself open to hard words from General James Tallmadge. We were in the habit professionally for years of coming across Judge Samuel Jones and invariably saw nothing but gentle courtesy.

Mr. Henry Nicoll of the New York Bar mentioned an anecdote suggestive of Judge Jones's forgetfulness or want of present observation. It is to be understood that the justice was alive to the reasonable enjoyments of the table and scarcely ever missed an invitation. Mr. Nicoll, one evening about nine o'clock, was quietly sitting in his parlor, reading a newspaper, when Judge Jones was ushered in. He was evidently in full dress, with attendant gloves. His honor was received very cordially and with respect. After a short

time, the old chief observed, "I'm afraid I have made a mistake!" "If you have," said Mr. Nicoll, "I am gratified and obliged—it has given me the honor of your company." "But—" said the judge, "have you not a party this evening?" "No, sir." The chief drew a note from his pocket and enquired, "Is not that from you, sir?" "Certainly, chief: but that contains an invitation for this day of the present month of last year, when, I cannot forget, I had the pleasure of your company."

Mr. Richard Mott was very persevering, battling in suits relating to assessments, and most of them were tried before Judge Samuel Jones, whose equanimity was remarkable, nothing seemed to affect or disturb him. Now the judge, from being a holder of much unimproved real estate, was somewhat inimical to the nature and mode of assessment. It invariably happened that in all the trials the judge charged against Mr. Mott, and it also followed that new trials were granted. Mott at last (while Judge Jones was presiding) observed to the jury that he did not know how it was, but Judge Jones always found against him, and he fully expected he would do so now, and yet it seemed useless, for he should certainly get a new trial. And true it was, the judge, without taking the least notice of what Mott had said to the jury, directed them to find against him. The jury, however, went out; hesitated; and came in again for instructions. "It is no use, gentlemen, your coming for instructions: you must find against Mr. Mott or he won't get a new trial."

Ex-Judge Jones went on from day to-day in his legal harness as though he were young—he was then upwards of eighty years old. A legal friend's office was close to Mr. Jones's. They had both been working during Christmas. Meeting, as they were retiring from their respective labors, our friend said: "Why Judge, I suppose if you were rich as" (naming *the* rich man of New York) "you would now entirely retire and shut out all the world."

"No, sir," rejoined he, "if I were at this moment as rich as the gentleman you refer to, I should travel abroad, take my time in visiting different countries; but when I returned, I should go back to my profession."

This, from a man who was, as we have observed, even then over eighty years of age.

There was in Chief-Justice Jones a latent chivalric tone which could be brought out on proper occasions. Mr. Jonathan Prescott Hall, Reporter of the New York Superior Court, was always manly and outspoken. The judge and Mr. Hall got into some misunderstanding and the latter felt so deeply what the other at last said, that he remarked: "If you were a younger man, Judge, I might better know what to do."

"Sir!" retorted the Chief-Justice, "I am not so stricken in years but what I consider myself subject to all the responsibilities of a gentleman."

In connection with the above, we give the following, told to us by a gentleman who overheard it:

While Thomas Morris (a son of Robert Morris who signed the Declaration of Independence) was United States Marshal in New York, he was introduced, in his office, to a daughter of Judge Samuel Jones, and then said: "It is now exactly fifty years ago that a somewhat remarkable occurrence took place between this young lady's father and myself. We, with others, had been socially convened, indeed to such an extent that I was oblivious the next day to what had taken place. Early on the following morning, I was called out of bed by a gentleman who handed me a letter, in other words a challenge from Mr. Jones, for insults and indignities which, it alleged, I had put upon him the night before. I declared I was not conscious of any thing of the kind; that Mr. Jones was my friend; but if I had transgressed any gentlemanly bounds at a time when I was not myself, I would give him ten thousand apologies, but as to fighting a duel with so quiet and inoffensive a friend as Mr. Jones, it was absurd, impossible. I was told, however, that what I had done was beyond apologies and that combat to the utterance must take place; that, although wine had knocked me up, I had, more than once, knocked down my quiet and inoffensive friend Mr. Jones. Well, we went out, and shots were exchanged, but no wounds made. I then thought, as did my second, that here might and should be an end, but not so

thought Mr. Samuel Jones. He insisted on further hostilities. I thereupon declared I would stand up for him to pop at me just as long as he desired, but nothing in the world should induce me to return his fire. This made him pause, and, after a little time, he said he had no unkind feeling towards me, but he considered his honor required more satisfaction. I declared I never had any unkind feeling towards him, nor could I consider—nor did my second—that any unconscious folly on my part required any thing further from Mr. Jones. A little more pondering among all of us brought on a reconciliation between this lady's father and myself."

Mr. Jones had a remarkable faculty. He would, on the bench and not on the bench, be, to all intents and purposes, asleep and yet be able, when the proper time came, to lay hold of and discuss all that had been said while thus somnolescent. Mr. Benjamin D. Silliman told the author that he was associated with Ex-Judge Jones and went to his rooms for a conference. He had prepared an elaborate brief, as the matter was an important one in ejectment, and he began to read this brief to Mr. Jones. Its reading lasted a good half hour. After a little time, eyes were shut and then mouth fell and head drooped aside; in fine, the senior counsel was with Morpheus. The reader thought that here was a good incident for a picture of a dull lecture. However, he went on; and directly he had ended, the ex-judge opened his eyes, like a bird at sunrise, and, in the most sensible way, also his mouth and went into and carried through remarks on the case which showed conclusively that while the animal slept, the mind was awake listening and analyzing most thoroughly. This double-barrel power was, indeed, very generally perceptible in our deceased Chancellor.

The wife of Judge Samuel Jones died at Rhinebeck in 1829; was buried there; and he requested to be laid beside her and not in his family vault.

There is something mysteriously touching and beautiful in this yearning and desire. It makes us believe that even in our ashes do live their wonted fires, and causes us to fancy how, in the many solitary days and nights of the widower, he experienced—

"The touch of a vanished hand
And the sound of a voice that was still."

RECORDER RICHARD RIKER.

Our readers, those at least who have been long residents of New York City, will readily couple Mr. Richard Riker with one or two of our amusing anecdotes. We confess we were not disposed to spoil the harmless fun in them by searching after the truthfulness or fancy with which they were made up.

But we cannot let the real worth of Mr. Recorder Riker be out of our pages; and it is with pleasure and confidence, from personal knowledge, and, in part, through near and most estimable branches of his family, we give what follows.

No one can take up works containing criminal trials of the period when Mr. Riker was presiding judge, without being satisfied that he was a sound criminal lawyer. There was general correctness of decision; and, what is not common with a criminal magistrate, he rather softened towards the erring in his course, as his years on the bench increased—perhaps it was even to a weakness shown in the familiar style he would use. But, with him, it was honesty of heart. He was the last man to wound by word or manner.

There was remarkable courtesy and gentlemanly bearing. It was inherent and dispensed to all alike—never offending. In confidence, child-like. This good-nature and perfect willingness to oblige were so great in Mr. Recorder Riker, that when sitting at chambers to grant orders—for which judges were then paid a fee fixed by statute—he would scarcely ever look at papers, but sign his name almost as a matter of course. It is said, the late Mr. Anthony Dey made a small wager that he would get Mr. Riker to grant an order for his own commitment. Dey took an order or *mittimus* made out to this effect to the Recorder, who signed and received his usual fee for his signature; whereby he had authorized the sheriff of the city and county of New York to commit Richard Riker, Esq., Recorder and Supreme Court Commissioner, to the common jail, etc.

While Mr. Riker was in the hey-day of life, party spirit between Republicans and Federalists had risen to a fearful height. A duel

had taken place between Colonel John Swartwout and De Witt Clinton, the mayor of New York. Mr. Riker was chosen by Mr. Clinton as his second. They were at the time intimate friends, having pursued their law studies together, under Mr. Samuel Jones, father of the late Chief-Justice Jones.

High and bitter words were passing from party to party in the public prints. A paper called *Toby Tickler* might be cited as an instance in which the abuse of Mr. Clinton was as untrue and sharp as language could make it. After the duel between Mr. Clinton and Colonel Swartwout, the outrages continued in opprobrious epithets and scandalous caricatures. Mr. Riker published his honest sentiments freely. These brought a challenge from Mr. Robert Swartwout, a brother of Colonel Swartwout; and Mr. Riker accepted it. The duel took place on the 14th of November, 1803 (as stated in the *New York Gazette and General Advertiser* of the following day). At this period Mr. Riker was twenty-nine years of age, and held the office of Deputy Attorney-General of the State. His second was Mr. Pierre C. Van Wyck. They fought below the banks near Hoboken, not far from the spot where General Hamilton fell by the hand of Colonel Burr, a year after.

Just as the word was given, Mr. Riker dropped, severely wounded in the right leg, about four inches above the ankle-joint. The shot of his opponent was fired an instant before his, consequently Mr. Riker's was lost in the air. Doctor Richard Kissam, sen., was his friend and physician and was immediately with him as he lay upon the litter on which he had been brought to his house in Wall Street (New York), near the old City Hall, now the site of the late Custom-House, where he kept generous bachelor's hall with his brothers, Samuel and the late John L. Riker for several years.

The surgeon was shocked at the crushed limb and asked his patient if he would like a consultation of surgeons.

"What would be the result?" he inquired.

"The result would be that the leg must be taken off."

"What chance do I stand for my life by keeping my limb?"

"One chance in ten," was the reply.

"I accept the chance cheerfully; so now, my friend, do what you can, and by the aid of the Almighty and a fine constitution, I may yet save both limb and life."

More than forty bones, at different times, were taken out; but, in seven months he was cured and able to attend to business.

When he was first wounded, his political enemies were desirous to have him arrested and brought into court for fighting a duel. But General Hamilton, who was personally friendly to Mr. Riker, and having influence with law officers, was able to have a stop put to such a proceeding, and he visited and consoled Mr. Riker. Those who knew Colonel Hamilton can appreciate his gentle and persuasive style of thought, of comforting and of manner.

Mr. Riker was undoubtedly a man of both animal and mental courage. A lawyer asked Robert Swartwout how Mr. Riker appeared at the time of the duel?

Answer: "As brave as Julius Cæsar."

It is a pity Halleck, so full of heart himself, should, although in mere playfulness, have penned and allowed the following incorrectness to go into type:

"The Recorder, like Bob Acres, stood
Edgeways upon a field of blood,
The why and wherefore Swartwout knows;
Pull'd trigger, as a brave man should,
And shot, God bless them! his own toes,"*

especially as the poet, at the same time, showered compliments and exclaimed:

"My dear Recorder, you and I
Have floated down life's stream together;
And kept unharmed our friendship's tie,
Through every change of Fortune's sky,
Her pleasant and her rainy weather."

* THE RECORDER: A Petition. By Thomas Castaly, Dec. 20, 1828.

Motto: "—On they move
In perfect phalanx to the Dorian mood
Of flutes and soft Recorders."—MILTON.

The engaging manner and nerve of Mr. Riker are illustrated in the fact that Mr. John Van Wyck took Mr. Swartwout's challenge to him, when the Recorder, being apprised of his errand, at the time when the letter containing it was handed in, cheerfully invited Mr. Van Wyck into his office, saying he had an interesting law case, and would like to have his views upon it. The whole ended in Mr. Riker's making such a kindly impression on Mr. Van Wyck that he went back to his principal and declined to be his second.

What follows we have from a most estimable elderly lady of the Riker family. Mr. Riker was a true patriot; and even when a child showed right feeling. Shortly after the battle of Long Island, a British officer and some of his men were quartered upon the family of Mrs. Riker's father, Mr. Lawrence. Mr. Riker, then a boy of about three years of age, was playing on the grass not far from where the officer was seated, and his mother watching him from the window. The officer had a small ornamented dirk in his belt. It attracted the attention of the child; and suddenly drawing it from the sheath, he plunged it towards the officer, saying, "This is the way my father sticks the regulars."

The officer, pleased with the spirit of the child, playfully caught him in his arms, and said: "If I meet your father in battle, I will spare him for your sake, my brave little fellow."

In several instances did Mr. Riker quietly, judiciously, firmly, yet kindly serve the Government and aid in the good order of the city of New York. A riot, principally among the Irish, took place near the Five Points, then and for a long time after filled with the worst portion of the population. Men, women and children were engaged in hurling stones and in other hostile acts. Recorder Riker was urged to have the military called out, with a view to restore order. He, however, thought it best to commence with pacific measures. So he called on the aged Father O'Brien, a Catholic priest; told him the circumstances and danger attaching to the riot; and asked him to accompany him to the spot and try what effect his appearance would have on the excited people. His reverence at once put on his stole and taking a missal in his hand, he locked

his arm through that of the Recorder's and they walked thus together to the scene of the disturbance in Orange Street. Father O'Brien opened his missal and commenced reading as they walked along. In an instant the excited crowd began to disappear down cellars and through alley-ways; and by the time they had reached the Five Points, not a soul was to be seen of the late active rioters.

On another occasion, the Recorder had been up-town during the evening to visit his aged mother, as was his nightly custom. On returning through Broadway, near Anthony now Worth Street, he saw a crowd of white men fiercely attacking a house occupied by colored people, and throwing missiles at them as they attempted to leave the house. On inquiry he found that a white girl had married a colored man. The trembling inmates of the house had flocked into the street to seek safety. Recorder Riker immediately went into the midst of them—telling them to gather round him and he would protect them. Brickbats and stones were flying in every direction. He called on the assailants to stop. A voice cried out, "That's the Recorder; don't throw those stones!" They stopped, and then shouted, "Hurrah for the Recorder! let him pass." And he left them accompanied by the colored people, whom he conducted in safety to the City Hall, and where he had them protectively secured for the night.

A person, who was for many years on the New York police, told the author how he had often seen Recorder Riker going and returning from his mother's house in the most severe winter weather and at hours when others were glad to be housed. It was a common habit with him to walk bareheaded, and our informant remembered how the steam would rise from Mr. Riker's smooth, glistening, well-developed skull as he pressed through drift and cold fog. He observed him one night in a snow-storm returning, with hat in hand and head bowed down. The good man unknowingly had rubbed or partly run against a pump with its arm-like handle. He thought he had rudely jostled a citizen; so, with all that amiable sensitiveness which was marked in his character, he half turned, bowed apologetically as he pressed onward and said: 'I beg ten thousand pardons. I hope I did not hurt you.'

MR. GEORGE GRIFFIN.

A man of large, loose frame, considerably over six feet in height, with great length of arm, hands and feet, moving in slow, measured march and yet carrying himself as though he had never been drilled—having, in contrast to all this, a fine fresh color, voice of almost feminine tone, marked simplicity of action and, over all, great kindness of manner, mixed with a natural desire to be courteous to every one,—this is our picture of the late Mr. George Griffin of the New York Bar.

While one trait in Dickens's character of Sloppy certainly attached to Mr. Griffin: "Bless you, sir, there's not a bit of him," returned Betty, "that's not amiable, so you may judge how amiable he is by running your eye along his heighth."

Yet who would imagine, from the above sketch, that he could ever have stood as an illustration of Mr. Pickwick? Mr. L. Gaylord Clark, in a communication to the New York Evening Post (30th May, 1866), puts the two together. The widow of a Mr. Seymour, an artist who had illustrated the Pickwick Papers, brought Mr. Dickens into the columns of a London journal on account of some extravagant and false claim of partnership in right of her late husband in the illustrated edition of the work. Mr. Clark, taking up the matter where Mr. Dickens speaks of the latter's first publisher, Mr. Chapman, thus quotes:

" 'He reminded me,' says Dickens, 'that I had given Mr. Seymour more credit than was his due. As this letter is to be historical,' he wrote, 'I may as well claim what little belongs to me in the matter, and that is, *the figure of Pickwick*. Seymour's first sketch, made from the proof of the first chapter, was of a *long, thin man*. The present immortal one he made from my description of a friend of mine at Richmond.'

"I now understand—and that is the point I am trying to get at—what has always been to me a mystery.

"Soon after Mr. Dickens's arrival in this country (to which, his 'American Notes' to the contrary, notwithstanding, I wish he would come again, and give us a course of his popular 'Readings'),

I had the honor to entertain him at dinner, with other literary and legal gentlemen and artists, whom he was delighted to meet, as they were to honor him by their presence.

“Among the guests was an old friend, whom we used to designate, among his intimates, as ‘Pickwick.’ S. D. D., whose first name was Samuel, was of the same noble nature as his immortal prototype, and was almost the express counterpart of his person. He had a goodly periphery; his limbs seemed to have been melted and run into his lower habiliments; his mild gray eyes beamed through his golden glasses; and all his features radiated benevolence and good feeling; insomuch that I could not help asking Mr. Dickens if my friend did not remind him of his world-renowned creation. To my great surprise, he answered: ‘Somewhat, but not nearly so much as an elderly gentleman whom I had the pleasure to meet the day before yesterday at dinner; one of the most benignant, kindly-featured faces I scarcely remember to have met—in this country at least. His manner, dignified and stately, was yet as simple and unaffected as that of a child. He is, I was told, an eminent lawyer of your city—George Griffin by name.’

“Can you think any person more unlike your previous conception of Pickwick than the late George Griffin? Thin as a lath, extremely tall, and as was thought by most persons, not a little awkward and ungainly, he seems the very reverse, in every point of view, of the great author of ‘Tittlebat Theory.’ But I can see now, that the ‘long, thin man’ first suggested to Dickens’s imagination, was in his mind at the time; and at that early day he was scarcely able to dissociate Pickwick from his ‘first impression.’ I could hardly help thinking, for a long time, that a sly joke was intended; but it struck many of the guests at the table as a veritable idiosyncrasy.”

Mr. Griffin was seldom engaged in criminal cases. In the best years of his life, he was employed in important mercantile suits. He was, however, once counsel in a matter in the New York Sessions. Some of our readers know that burglars use tools technically called “brace-and-bits.” A prisoner, in this case, was charged with burglary; and a police-officer proved that *brace-and-*

bits were found in his possession. A presiding alderman interrogatively observed, "What! a brace-and-bits?" "Yes, your honor," meekly and with great appearance of simple courtesy and explanation, responded Mr. Griffin; "horse apparel, your honor."

We remember being told by Mr. Stinemets, a chief clerk in the office of the Register in Chancery, in New York, that he resided near to Mr. Griffin; that there was a noble tree not far from their dwellings, but, on a raw and gusty night, this tree lost its most beautiful limb, which lay, amid scattered leaves, at its base. In the morning after, as Stinemets came near to the tree, there was Mr. Griffin, with his arms under his elaborate coat-tails, viewing the desolation through gold-rimmed spectacles. They together bewailed the severance of the limb; and having done so, Mr. Griffin said, slowly, and as though he were at the same time engaged in counting the leaves, and with child-like simplicity, "Mr. Stinemets, don't you think, sir, it could be stuck on again?"

There was often retained against him, in insurance and commercial cases, a gentleman who was quite his equal, except in size, and there he was his contrast. The latter was as game as a bantam-cock; and Mr. Griffin's temper was often sorely tried by him; but still he was never known to become belligerent. To show, however, how much he felt and how far his adversary had gone to wound, he would, in walking from court, say of the latter to some associate at his side, raising an arm to a right angle, extending a long forefinger with a view to emphasize, and with almost a treble voice: "That little man, sir, will be shot; he'll certainly be shot, sir. I shall not shoot him; but, be assured, sir, that little man will be shot."

Mr. Griffin's foot matched his large figure. It was the foot of Hercules—indeed you might have judged of the man *ex pede Herculem*. He had the abominable American habit of resting his leg upon the court-table. On one occasion, Mr. John Anthon was engaged in a cause; and in examining a witness, desired to pin him down as to the size, as to the length of some particular thing. After going round the matter with the witness without having

secured any certain dimensions, Mr. Anthon suddenly pointed to Mr. Griffin's foot, which was elaborately spread upon the bar-table, and asked, "Was it as long as Mr. Griffin's foot?" We need hardly add that the foot was in its proper place under the table before the witness's eye could measure any part of it.

Jurors not uncommonly elevate their feet on the partition bars before them while listening to the arguments of counsel. A distinguished Attorney-General of Massachusetts caused a cessation of the practice, for one term at least, in Middlesex County, by coolly asking the court which end of the jury he was expected to address.

As to the size of our counsellor's foot, a traveller called at an hotel in Albany, and asked the waiter for a boot-jack. "What for?" said the astonished waiter. "To take off my boots."

"Jabers, what a fut!" the waiter remarked, as he surveyed our traveller's legs.

At length—we may say at full length—he gave it as his opinion that there was not a boot-jack in all creation of any use for a *fut* like that, and if the traveller wanted "them are" boots off, he would have to go back to the fork in the road to get them off.

Mr. Griffin had a habit of studying his arguments as he went towards court. With eyes as though penitentially fixed on the ground, seeing no one, heeding nobody, he would stride along gesticulating much, with arms and fingers outstretched. There was a case of importance at Jamaica, Long Island, before Judge Ogden Edwards. Among other eminent counsel were Roger Sherman and George Griffin. The latter had been seen by a simple-minded farmer, who had some duty in court, going along the road thus gesticulating. In the court-room, while Griffin and Sherman and other advocates were close together, the farmer, nudging a lawyer and really intending to point out Mr. Griffin, asked who that remarkable person was? Now, the lawyer fancied it was Sherman who was asked about, and answered, "Oh, that is indeed a remarkable person: it is the great Connecticut counsellor, Roger Sherman, whose name has become notorious by his connection with the

Hartford Convention." "Ah," said the farmer, "that accounts for it—I was sure, from his strange actions all the way along the road, there was something very serious on his conscience."

When Mr. Griffin had got warm in a case and you could see he was in a belligerent state, and he had made a hit, he would observe, through his meek-toned voice, to some brother of the bar sitting near, "The enemy didn't like that, sir, did he?" And at each supposed hit, he would so repeat, "The enemy didn't like that, sir, did he?"

CHANCELLOR REUBEN HYDE WALWORTH.

The last Chancellor of the State of New York, Reuben Hyde Walworth, was remarkable for his breaking in and interruption of counsel when stating facts or active in their argument.

"His heart's his mouth;
What his breast forges that his tongue must vent."

We have often hoped this gentleman was unconscious of the increased labor he thereby gave and the pain he often caused.

Younger members of the bar felt his course so severe as to insist that his initials stood for *Raw-Hide* Walworth; and yet, in private life, his voice came with an under-breath; his manners were perfectly gentle; while he was very considerate to all and every thing around him. He had more equity and none of the coarseness of Lord Thurlow.

The writer has seen him with children on his knee, children of a friend, and observed how his conduct to them was charming.

His mind teemed and ran over—he would not stay to measure. We heard a brother lawyer remark, as we both witnessed in court the Chancellor's incessant—we were going to say chiming-in, but it was more like jaugling, out of tune and harshness—interruptions, that "his honor thought aloud"

Counsel had to fence with the Chancellor more than with an adversary; and he was constantly placing himself in a new attitude and drawing you to new ground—and yet you had not the power to exclaim with Hamlet, "I'll go no farther." When the case was

ended and a decision came, there were no traces of the by-play in the latter—you had an equitable, able, honest and sound decision.

Chancellor Walworth appeared hardly open to eloquence or to respect it. A friend observed to the author that he remembered how, on one occasion, a distinguished member of the bar was commencing a case with a carefully-prepared and eloquent exordium, which was attracting lawyers and suitors. Suddenly, abruptly came the untuned voice of his honor—before he could have looked through the first point in the case—asking “When the bill was filed?” followed by “Who were the parties? Why was such an one made a defendant?” until counsel was engaged in a running catechism and his eloquence, like the witches in Macbeth, “melted as breath into the wind.”

An advocate before Chancellor Walworth had to know all his declensions or he was soon put, by interruptions, out of school, unless, like the late Mr. Abraham Van Vechten of the Albany bar, he could manage to avoid responding categorically to any and all of the equity judge’s incessant propositions and suppositions.

“Suppose, Mr. Van Vechten, that A.? etc.—”

Van Vechten.—“I am coming to that, your honor.”

The Chancellor (two minutes afterwards).—“Yes, but suppose this case, Mr. Van Vechten, etc.—”

Van Vechten.—“I am coming to that, your honor.”

In this way, by the constant repetition of, “I am coming to that, your honor,” the counsel would jump over every one of his honor’s hypothetical volunteer replications and bars; go through his own brief; and sit down without ever “coming to that.”

One of the most skillful and readiest combatants with the Chancellor was the late Mark Reynolds of the Albany Bar. He had wit and joke covered by a serious and seemingly immovable countenance. On one occasion he opened his case in a purposely-confused manner. Soon the Chancellor asked a question; Reynolds, by his response, made matters darker.

“Ah,” observed the Chancellor, “I see—*so and so* is the case?”

“No,” said the counsel; and he proceeded slowly, with malice prepense, to befog matters more and more. Another question:

when the Chancellor was blandly told he was again at fault. Questions increased and so did counsel's confusing responses. At last, Reynolds, in the coolest manner, observed: "Your honor may guess all day and you won't find out what this case is about—until I tell you." The court became a silent listener and Reynolds laid down his facts clearly and uninterruptedly.

In another matter wherein Mr. Reynolds was counsel, a point was started by the Chancellor that the wife of a party was not before the court; and he had granted an order staying all proceedings until she was brought in. But in the face of this, Reynolds appeared in court and was about to move in the suit, when his opponent, with warmth, expressed his surprise and objected to any motion until this wife was brought in; while the Chancellor, as quickly, pressed and approved of such objection. Mr. Reynolds observed, he was retained to act for his client and thought he could show the court he ought to be allowed to proceed. But the Chancellor was peremptory. Yet, nevertheless, Reynolds, in his cold and passionless manner, observed he was not only retained, but—something unusual—had been paid his fee beforehand and he really must be allowed to go on; and still considered he could show how he ought to be allowed to do so. However, the untiring Chancellor checked him; and as often as counsel would try to get in one word, the court said two by way of opposition.

"Well," observed Reynolds, "if I must not be allowed to go on, I have to move that the matter lie over a sufficient time to give an opportunity to my client to marry and bring a wife into court."

"What!" said the Chancellor, "is he not married?"

"No, sir."

"Why, then, was this order made?"

"He was married then, but, if it please your honor, his wife is dead."

"Why did you not say so at first, Mr. Reynolds?"

"Because your honor would not give me the opportunity."

Daniel Webster was arguing a case before the Court for the Correction of Errors of the State of New York. Chancellor Wal-

worth was one of the court; and he, at the outset, broke in with a supposition. Webster, with his heavy black eyebrows and ponderous head and shoulders, growled some short response—and went on. Again struck in the Chancellor, followed by another growl from “Black Dan.” This thing occurred several times—until, at last, Webster, looking like an embodied storm, in muttering thunder, observed—with those large eyes, which seemed to have had deep sockets caverned purposely for them, bearing upon his honor:

“Will the learned Chancellor allow me to be edified after the adjournment of the court?”

We must crowd in here the following specimen of a suppressed species of humor attributed to Webster in addressing the inhabitants of a city of New York State:

“Men of Rochester, I am glad to see you; and I am glad to see your noble city. Gentlemen, I saw your falls, which I am told are one hundred and fifty feet high. That is a very interesting fact. Gentlemen, Rome had her Cæsar, her Scipio, her Brutus, but Rome, in her proudest days, had *never* a waterfall a hundred and fifty feet high! Gentlemen, Greece had her Pericles, her Demosthenes and her Socrates, but Greece, in her palmiest days, NEVER had a waterfall a hundred and fifty feet high!! Men of Rochester, go on. No people ever lost their liberties who had a waterfall one hundred and fifty feet high!!!”

Mr. Robert Bogardus, of the New York Bar, was arguing a case before Chancellor Walworth. It involved the construction of an intricate will. The Chancellor plied him with questions; as soon as one was answered, another was propounded, until the advocate seemed ready to give up. Finally, his honor appeared preparing for a *coup de grace*:

“Supposing a will were drawn in these terms”—and here the Chancellor stated a nice and hypothetical case, still having some analogy to the one under argument—“what,” added he, “Mr. Bogardus, would be your construction of such a will?”

Bogardus, looking gravely at the Chancellor, asked him if he really wished his opinion as counsel on such a case?

"I do," responded the Chancellor.

"Well, then," said the counsel, with a merry twinkle in his eye, "if your honor will put it upon paper, I will take it to my office for examination and give you my opinion in the course of a day or two."

This turn stayed the Chancellor for a time and Mr. Bogardus proceeded.

Treadwell was a well-known baker of Brooklyn, next New York. He was a party in a suit which had reached the Court for the Correction of Errors, and he chose to be his own advocate. Chancellor Walworth, as was his wont, kept up a running fire with Treadwell, who showed he could well tread law as well as dough. An impatient lawyer, waiting for a cause on the calendar, asked of a brother, what case was on argument.

Answer.—"It is the case of the Master of the Rolls against the Chancellor."

Although Chancellor Walworth was quite open to kindly influences, there was always a sternness of purpose about him. When Circuit Judge, three young men, brothers, named Thayer, were tried and found guilty of the murder of John Love. His honor, instead of being content to express his concurrence with the jury and pass the final sentence, thus thundered upon the minds of the prisoners:

"When you have returned to the solitude of your prison, where you will be permitted to remain for a few short weeks, let me entreat you, by all that is still dear to you in time—by all that is dreadful in the retributions of eternity—that you seriously reflect upon your present situation and upon the conduct of your past lives. Bring to your minds all the aggravated horrors of that dreadful night, when the soul of the murdered Love was sent unprepared into the presence of its God, where you must shortly meet it as an accusing spirit against you. Bring to your recollections the mortal struggle and dying groans of your murdered friend. Recollect the horror that seized you while you dragged his murdered remains to the place of concealment. Think of the situation of your aged father to whom you are indebted for your

existence. Think of the grief of your distracted and disconsolate mother, who has nursed you in the lap of affection and watched over the tender years of your infancy; who must now go down to her grave sorrowing over the ruins of her family. Think of the dreadful agonies of the unnatural and desolate widowhood to which you have reduced the unfortunate partners of your beds and your bosoms. Think upon your poor orphan children, on whom you have entailed everlasting disgrace and infamy; and who are now to be left, fatherless and unprotected, to the mercy of the world. And when, by such reflections as these, your hard and obdurate hearts shall become softened, let me again entreat you, before your blood-stained hands are raised in *unavailing* supplication before the judgment seat of Christ, that you fly for mercy to the arms of the Saviour and endeavor to seize upon the salvation of His Cross. Listen now to the dreadful sentence of the law, and then farewell forever, until the court and you, with all this assembled audience, shall meet together in the general resurrection. You and each of you are to be taken," etc.

We must be allowed to lighten up the above with a ballad, which was sent to the Buffalo Patriot newspaper:

THE THREE THAYERS.

In England sevrel years ago
the Seen was pleasant fair and gay
John Love on bord of a Ship he entred
and saled in to a merica

Love was a man very perceiving
in making trades with all he see
he soon in gaged to be a sailor
to sail up and down on lake Erie

he then went in to the Southern countries
to trade for furs and other skins
but the cruel French and saveg Indins
come very near of killing him

But God did spare him a little longer
he got his loding and come down the lake

he went into the town of Boston
whare he made the grate mistake

with Nelson Thair he made his station
thru the sumer for to stay
Nelson had two brothers Isaac and Israel
Love lent them money for thare debts to pay

Love lent them quite a sum of money
he did befriend them every way
but the cruel cretres tha coulden be quiet
till tha had taken his sweet life a way

One day as tha ware all three to gether
this dredful murder tha did contrive
tha a greed to kill Love and keep it secret
and then to live and spend their lives

On the fifteenth evening of last december
in eighteen hundred and twenti four
tha in vited Love to go home with them
and they killed and murdered him on thar floor

First Isaac with his gun he shot him
he left his gun and went away
then Nelson with his ax he chopt him
till he had no life that he could perceve

After tha had killed and most mortly brused him
tha drawd him out whare tha killd thare hogs
tha then caried him of apease from the house
and deposited him down by alog.

The next day tha ware so very bold
tha had Love's horse ariding round
Som askd the reason of Lows being absent
tha sed he had cleerd and left the town

Tha sed he had forgd in the town of Erie
the sherief was in persuit of him
he left the place and run a way
and left his debts to colect by them

tha went and forgd a pour of turney
to collect Loves notes when tha ware due
tha tore and stormed to git thare pay
and sevrel nabors tha did sue

After tha had run to ahie de gree
in killing Love and in forgery
tha soon ware taken and put in prison
whare tha remained for thare cruelty

Tha ware bound in irons in the dark dungon
for to remain for a little time
tha ware all condemd by the grand Jury
for this most foul and dredful crime

Then the Judge pronounced thare dreadful Sentenc
with grate Candidness to behold
you must all be hangd untell your ded
and lord have mursey on your Souls.

Chancellor Walworth was as industrious in getting up printed rules as he could have been in the active participation of a suit. By the time he left the bench, there were upwards of two hundred standing rules of his court. The Chancellor was on a steamboat wherein John A. Collier, afterwards Attorney-General, was a passenger. The former was expatiating on his having much improved the Rules; and he ended by observing that a second edition was about to be published. Collier, in a significant, droll way: "Is the work in *one* volume, your honor?"

His honor must have rejoiced at the prospect of a good apple season, for his fondness for this fruit, while on the bench, was remarkable. And, as to water, old Kirk, the former messenger of the Court of Chancery, used to tell fabulous stories of the number of tumblers which his honor sipped and swallowed while syringeing counsel. "What a pity," said a brother to the author, while they were sitting under his worship, "what a pity, for the sake of the messenger, the Chancellor has not a Croton water-pipe passed through him whenever he is on the bench."*

* The gentleman who said this was the good-natured ex-Judge Robert

While Mr. Walworth was Chancellor, he had his office and library in the capitol at the seat of government of this State. One day, when sitting there alone, the door opened slowly and a rough-looking person, evidently from somewhere in the backwoods, came quietly in; and walking up to the Chancellor's desk, said: "How are you, Rube?" The Chancellor at once recognized him as an acquaintance of his early days and, welcoming him cordially, asked him to take a seat. The man did so, half-shyly half-familiarly, and entered into conversation. He told the Chancellor he had not seen him for many years, since he had risen so in the world, but being now in Albany he thought he'd call and have a look at him. His shyness soon wore off and, becoming familiar as of old, said: "Well, Rube, I suppose you drink cold water yet?"

"Yes," was the reply.

"Well, so you did when we used to play cards up in the Chata-guy woods during the war. What darned fools we were! we drank rum and you drank water and so you won all of our money. But that was all right. If we were such cussed fools as to drink rum while you drank water, we'd no right to complain. You remember that *I O U* I gave you? well, that day I drank rum while you drank water and so you won my money. I ain't finding any fault, but concern it, Chancellor! I didn't like your suein' the note after you joined the church."

The gentleman who had the anecdote from the Chancellor himself, on the coming to this asked: "But, Chancellor, did you sue it?"

"No," he replied, "certainly not. It was only one of his jokes. He was an inveterate joker, the whole bent of his mind seemed to be 'flamming folks' as he called it; and this joke of his, at my expense, probably furnished him enjoyment for many a day."

It is well known that Chancellor Walworth resides at Saratoga Springs in a dwelling embosomed in fragrant pine-trees.

H. Morris. He had a club-foot, and the story goes that when he made an offer to the lady he afterwards married, she was urged against marrying a lame man. "Yes," she responded, "he may be lame in his foot, but there is no lameness in his head or at his heart."

Sojourners at these healing springs, in looking into the village Sabbath-school, can see the ex-Chancellor animating the young in their Bible investigations.

During the presidency of Mr. Tyler, there was a vacancy in the United States Supreme Court Bench, and his excellency nominated Chancellor Walworth to fill it. Mr. Walworth used to claim that he descended from Lord Mayor Walworth, who struck down Wat Tyler; while President Tyler was strongly impressed and even claimed to belong in blood to Wat. The Chancellor had, framed and hanging conspicuously in a room, the coat of arms of the Walworth family. Mr. William Paxton Hallett, Clerk of the Supreme Court in New York, was an active politician and much attached to Judge Samuel Nelson, then of the Supreme Court of the State of New York. At this time, the case of Jack, a fugitive slave, came before our Supreme Court on a writ *de homine replegiando*, Judge Nelson presiding; and his honor gave a well-weighed opinion to the effect that Jack's master was entitled to reclaim him. (Jack v. Martin, 12 *Wendell's Reports*, 311.) The case was removed to the Court for the Correction of Errors, where Chancellor Walworth presented his views, and in parts of them there was strong language against slavery. This became known to the Southern members of Congress; and Mr. Walworth's nomination lingered in the Senate. Hallett went to Washington; saw President Tyler; suggested the Chancellor's ultra views in the Jack case, and stated, at the same time, how constitutional were the views of Judge Samuel Nelson, while he was equal with the Chancellor in official standing and law learning. And then Hallett asked:

"Mr. President, is it the case that you trace your descent from Wat Tyler?"

"Certainly, and I am proud of it."

"Perhaps, Mr. President, you do not know that Chancellor Walworth claims to come from Walworth, Lord Mayor of London, who killed Wat Tyler?"

"Is it possible?"

"Certainly, and more than that, he ostentatiously displays, in

a glazed frame, hung up in a room of his house where he holds court, the coat of arms of these London Walworths and clings to it as attaching to his own family."

Very soon afterwards Mr. Walworth's name was withdrawn by the President and Judge Nelson's sent in and confirmed. "We tell the tale as 'twas told to us."

A contributor to *London Notes and Queries* is under the impression that private revenge had more to do than loyalty to his sovereign Richard II., when Walworth, Lord Mayor of London, stabbed Wat Tyler in Smithfield. John Stow, in his "*Survey of London*," under the head of "The Stewe on the Bankside, Southwark," says: "Next on this banke was sometime the Bordello or Stewes, a place so called, of certaine stew houses privileged there for the repaire of incontinent men to the like womē." After reciting divers curious constitutions "ordayned" by the Commons and confirmed by the King and Lords, for the regulation of such establishments, Stow goes on to relate: "Also I find that in the fourth of Richarde the Second, these stew houses, belonging to William Walworth, then Mayor of London, were farmed by Froes of Flawnders and spoyled by Walter Tighler and other rebelles of Kent." (Vol. 9, Third series, 194.)

When the time was about come for the Court of Chancery of the State of New York to close its portals and its last presiding officer was, by force of legislative enactment—although in the prime of his great usefulness—to sink into a private citizen, Mr. Murray Hoffman, as he was ending a case then before the court, thus addressed Chancellor Walworth:

"I have now finished what I deemed it my duty to urge in behalf of my clients in this most complicated case. But I cannot sit down without uttering something more personal to myself and to you. It is, in all probability, the last time I shall address you as Chancellor of the State of New York. To one whose professional life has been almost solely connected with this court, who has served in an humble sphere as one of its ministers, the thought of its destruction cannot but be full of anxiety and regret. Apart

from the prevalence of pure religion, the patriot can breathe no more useful prayer for his native State than that the future administration of justice may be distinguished for intelligence, learning, integrity and conscientiousness, such as has illustrated the course of the Court of Chancery from the days of Robert R. Livingston to the present hour. Purity, impartiality and ability have shone in the decisions of those who have gone before you, now shedding reputation and honor upon the State as well as upon their own dazzling, bright names; lighting the path and guiding the minds of the jurists of other States in the administration of the high morality of the system of equity. It must be a source of consolation to yourself, as it is of gratification to your friends, that the white robe of justice transmitted from the illustrious men who have gone before you, has not, since it fell upon you, been soiled or rent."

Chancellor Walworth, in his address to the Bar on assuming the duties of his office, told us he was "brought up as a farmer until the age of seventeen, deprived of all the advantages of a classical education and with a very limited knowledge of chancery law."

No equity judge in any country has left a nobler monument of mental power, undeviating fairness and integrity than Chancellor Walworth. To use the words of Judge William Kent, embraced in a note to his father's Commentaries: "If, in his demeanor on the bench, the Chancellor was sometimes open to criticism, it was that only which has been applied to kindred genius, that 'he was prevented, by his inconceivable rapidity in apprehending the opinion of others, from judging accurately of their reasonableness.' This criticism, however, never approached his mature decisions, embracing the whole circle of equity. Never, perhaps, were so many decisions made, where so few were inaccurate as to facts or erroneous in law. If it was destined that the Court of Chancery should fall under a reform, which apparently designs to obliterate the history as well as the legal systems of the past, it is a consolation to reflect that it fell without imputation on its purity or usefulness and that no court was ever under the guidance of a

judge purer in character or more gifted in talent than the last Chancellor of New York.”*

JUDGE JOHN WORTH EDMONDS.

No gentleman's character is more clearly developed, through professional action, than that of John Worth Edmonds—we observe ready talent, frankness, firmness and broad, manly good-nature. He could never be a trimmer.

Several parts of this work confirm what we have just said, and the following will further illustrate it:

Judge Edmonds had a contempt for technical objections. On one occasion the point was made that a notice of motion was one day short of the allotted time.

“Well,” said the judge, “are you ready to meet the motion?”

“Yes,” was the answer; “I am as ready as ever I shall be, but I have a right to have the motion denied, with costs, for the irregularity.”

“Very well,” observed his honor; “your objection is good and I dismiss the motion, but without costs; and, allow the other side to renew it in five minutes on the same papers.”

On an occasion of some trial which drew many people to court, when the room was full the judge ordered his officers to admit no more, although there was a crowd around the door. Occasionally one would go out and another enter in his place; and one who thus entered came inside the bar and, addressing the judge, complained that, although a member of the Bar, the officers would not allow him to enter the room, notwithstanding he had demanded it as a right!

* No longer in the State of New York can it be said there is a court which is never closed. In New Jersey there is still such an one. Mr. Joseph P. Bradley, of the Newark Bar, was one day nettled at a decision made by the Chancellor of his State. A young lawyer entered his office and asked whether the court was open.

“Open!” responded Mr. Bradley, “yes, certainly; hell and chancery are always open.”

"Did they do so?" asked the judge.

"They certainly did," answered the excited gentleman; "and I can prove it."

"I am glad to hear it," was the answer; "it is just what I ordered, and I rejoice to find I have such faithful officers."

Mr. Edmonds was educated at Union College, Poughkeepsie. At a meeting of its graduates, the subject of building a hall for their annual meetings was under discussion and particularly the subject of raising the means. One of the Alumni proposed the plan of each one's appropriating a certain amount each year, paying down the first instalment and giving his note for the balance.

Edmonds—always free-spoken—observed that it reminded him of a friend, who had been married once or twice, and now was looking out for another wife; and finding a lady who just suited him, he had offered himself. But she had answered him that she had resolved never to marry a widower unless he had six children.

"Six!" exclaimed his friend; "alas, madam, I have only four, but I'll give my note for the balance."

Soon after Judge Edmonds came into the exercise of equity jurisdiction on the dissolution of the Court of Chancery of the State of New York, he had a divorce case before him—which he held under advisement. During this suspension of proceedings, the counsel for one of the parties reminded the judge of the case to the end that there might be a speedy decision.

"Why," asked the judge, "what occasion is there for hurry about it?"

"If your honor please, my client is engaged to be married again and is only waiting the termination of these proceedings."

"Well," closed the judge, "can't they sleep together *de bene esse* and get married *nunc pro tunc*?"

"Did I ever tell you this story?" said his honor to the author: "On the day of President Adams's funeral, I went down to the Battery to witness the ceremonies. While standing upon the sidewalk opposite the Bowling Green, I saw the military companies marching down in all their funereal glory, with their music playing and banners flying. As they arrived near where I was stand-

ing they generally halted and dismissed for a few moments, waiting for the remains of the departed sage to arrive. Among other companies was one that had a fine band and I listened to the music until it stopped. As soon as it did, the band dispersed; and one of them, a fat, jolly-looking fellow, wearing a very red coat and almost as red in the face, came over towards me. He carried one of those immense brass instruments on which these bands are accustomed to manufacture, as their bass parts, a pretty good imitation of walking thunder; and as he passed me, puffing and blowing with recent exertion, he looked so good-natured that I could not help saying to him—

“ ‘It must require a strong constitution to carry so much brass about you !’

“ Whether the pleasant rogue knew me or not I cannot say. If he did, the joke was all the better, for he answered very promptly—

“ ‘I don’t know: do you find it so ?’ ”

Once, before Judge Edmonds, counsel were engaged in arguing a point of practice. Both sides respectively insisted that he had decided the point (in some other case) on their side. He said it might be so, although he did not recollect it and seemed somewhat annoyed. One of the counsel then said:

“ Well, if it is so, it is certain your honor was right once.”

“ Yes,” was the response, “and equally, in such case, certain I was wrong once.”

At the Bar he happened to be opposed by counsel who insisted, in rather extravagant language, that he could bring, in support of his position, a stack of authorities as high as Mount Horeb.

“ Yes,” retorted Edmonds, “and, then, like the prophet of old, you may stand on Pisgah’s height and only view the promised land.”

“I had,” said Judge Edmonds to the author, “exchanged with a brother judge and, after holding court for him in the country for a fortnight, returned to town and resumed duties in my own court. The first case which came before me, was an action brought by an old lady for damages, on account of being run over by an omnibus. The stage proprietor made no defence and the evidence showed

such brutality on the part of the stage-driver that the danger was in the jury suffering their feelings to run away with them. I had, therefore, to take some pains to calm them down and warned them of the inutility there would be in giving a verdict for any larger sum than was demanded in the pleadings. So, the jury gave their verdict for one thousand dollars, being the full amount at which the damages had been laid. This being disposed of, I passed to another case. Ere long, I observed the old lady had not left court, but had retired to one of the back benches, where she was sitting surrounded by several female friends, and crying bitterly. I beckoned to her counsel to come to me and asked him what it was that occasioned her so much sorrow? He had not observed it before, but went to see and, in a few moments, returned to tell me, 'her lament was that she had heard I was a feeling man and she had managed to put off her trial two weeks so that the stranger judge should not try it and waited till I could get home; and now, when I had tried it, instead of dwelling on the extent of her sufferings and how much she had been abused, as she expected, I hadn't said a word about it!'

At one time, his honor had his library in the front parlor. Sitting at his table, he heard the door-bell ring several times. No servant answering, he went and found a young woman who wanted to see him. He asked her to walk in and she did so, but in such a brusque and unceremonious manner, as to brush her dress against him and offend his sensitiveness. As soon as he was seated, he resumed his pen at his table. After a few moments of silence, he told her to talk on, as he could hear and write too. She told her story, giving him to understand she had lived several years with a man and had several children by him and now he was going to be married to another woman and she wanted to know what she should do.

"Do!" retorted the judge, "sleep alone after this."

Mr. Edmonds was addressing a political meeting in the country, speaking from a platform erected in a grove of trees. There was a large audience; and when he came forward, they crowded around and many got upon the platform—so many, in fact, that he had

hardly begun his speech when the staging gave way and his honor was pitched head-foremost among the people. A corner only of the platform remained sound; on this the judge perched himself; and resumed his address by saying, "he had no objection to a fall when he could thus do so into the arms of his friends, for, then, he was sure to rise again and that right speedily."

An acquaintance heard ex-Judge Edmonds coin a new and expressive word. The latter was in a city rail-car and a specimen of humanity from the country sat next to him. Our man, unused to city life, tried to open conversation by—

"Well, New York, I declare, is somewhat of a place and I guess there is a pretty sight of people here?"

The judge, with sober manner, looking down upon him through his gold spectacles, responded:

"Yes, it is rather a *folky* place."

"The only time," said this ex-judge to the author, "I ever appeared in a Marine Court (a court of limited jurisdiction) was the other day, on behalf of a friend of mine, a physician, who had lost a valuable and favorite horse through some mismanagement at a livery-stable. I sent him to an attorney; and, on the day of trial, attended myself to render aid if necessary. During the progress of the cause the question arose, whether hemlock-plank was fit for stabling. The attorney for the livery-stable man insisted it was. The presiding judge, however—without leaving the matter to evidence—broke out in great wrath:

"'Do you suppose the court don't know any thing, sir? The court has owned a good many horses in its day and knows what is fit for stable floors, sir. You needn't argue that point, sir. The court knows better, sir.'"

On being asked what he thought of a speaker who had a loud voice and was rather prosy, Mr. Edmonds observed: "he considered him a remarkable man—for he could fill and empty a house at the same time."

His honor told this of himself to show his abstraction:

"I had remained at home one Saturday to study up a case I was to argue on Monday. I worked hard at it all day and till a

late hour in the night. It was uppermost in my mind when I went to bed and the first thing I thought of in the morning. After breakfast I hurried into my library, put my bundle of papers under my arm and hastened to the cars on my way to my office. I thought it strange the car was so empty, for usually they were very crowded in the morning, but I thought that I had started earlier than usual. When I got into the Bowery I was surprised to find so few stores open and so few people in the street, and I thought it must be some fast day; but thought it strange that I had not noticed any proclamation to that effect, and that the morning papers had not spoken of it. I determined to ask an explanation of the first acquaintance that got into the car. But the strangeness continued in the fact that no acquaintance did get into the car, and so I continued along down by Centre Market, and through Centre Street to the City Hall, wondering what it all meant. At length I could hold in no longer, and went up to the conductor and asked him if he could tell what was the reason that there were so few people in the street and so few stores open that morning? The conductor looked at me as if he thought I was quizzing him; but after a while he answered, rather curtly—

“ ‘I don't know, except because it's Sunday.’

“ ‘Sunday is it? Well, I never thought of that.’

“ ‘And sure enough,’ continued the judge, “the idea of it's being Sunday never once entered my head.”

He was dining with a party of gentlemen, Bishop Wainwright being present. The judge sat at one hand of the hostess, and William Cullen Bryant on the other. At the other end of the table were Bishop Wainwright and Colonel Adams, formerly of the United States army.

It was just at the close of the Mexican War, and the difficulties between Generals Scott and Worth were the subject of conversation at the end of the table where the bishop sat. The judge had taken no part, although he heard it, as did all the company.

At length, some remark was made touching General Worth's private character, and the judge entered into the conversation

by asking the bishop if he knew the cause of the quarrel between the generals? The bishop said he supposed it was the court-martial business on their route from Vera Cruz to Mexico. Judge Edmonds said, No! The alienation had begun before; and went on to state that, at the landing at Vera Cruz, when General Scott was standing surrounded by his staff and his generals, Worth approached him and said he had three batteries ready, and asked if he might not open his fire on the city? Scott replied, his orders were that not a gun should be fired until all were ready. But Worth urged that while the others were getting ready, he could do much execution. Scott, turning to his officers, observed:

"The orders of the commanding general are, that no gun is to be fired until all are ready; but General Worth wants it otherwise. I don't know but I will have to put it to the vote of a town-meeting."

Worth colored, bowed and retired. Bishop Wainwright thereupon remarked, "I can hardly believe that story to be true."

Judge Edmonds replied that he had it from a brigadier-general of the army who was present.*

The bishop observed: "Perhaps I am talking to a friend of General Worth?"

The answer was, "Yes, sir, and to a relative. My name is John *Worth* Edmonds."†

We have before referred to the fact, that Judge Edmonds, in the course of his judicial career, had several threatening anonymous letters sent to him. His honor has been good enough to

* Judge Edmonds has been heard to say that the alienation was even prior to this, and showed itself when they were on the Rio Grande; but what caused it was not known.

† The mother of Judge Edmonds was Lydia Worth, daughter of Thos. Worth, one of the settlers of Hudson. She was a descendant of William Worth, who emigrated from Devonshire, England, in 1640, and settled in Nantucket. From this common stock descended Major-General Worth of the United States army, Gorham A. Worth, who was president of the New York City Bank, and the Olcott and Edmonds families.

allow us to copy, *verbatim et literatim*, two letters received about the period of the anti-rent excitement and trials.

Copy of a letter post-marked "Boston, October 7," addressed "Judge Edmonds, Hudson, New York."

"FRIDAY BOSTON Oct. 8 1845

"For the words why did you not kill the scoundrel Sir.

"These words of yours show that you are utterly regardless of human life That you love human blood that you are a villian in fact & an open enemy to the rights of man Your charge to the twelve *enemies* of our Comon race shows you to be a brutal monster

"I the writer have information which I would not dare to be let known

"I tell you plainly that their is an association of 7 that have sworn by the hearth stones of their fathers that his rotten Patroon carcase shall disapear from amongst men

"Your blood when you think not we have 3 ways to do it we will accomplish the job "MOLLY MAGUIRE & REBCKA"

Copy of a letter post-marked "New Orleans, Oct. 30," and addressed "Hon. Judge Edmonds, Hudson, N. Y."

"NEW ORLEANS.

"SIR—You packed You charged You dictated to the miserable Tools the Jury in Boughton's Case But there is a Jury for you in Hell You Blood Hound and waiting anxiously to Cluch you. If there is not a hole through your Heart Before a month You will Bee lucky You Reverend Iniquity How much Do you Get for procuring the Conviction of that Innocent man & Prostituting the Sacred Cause of Justice for Innocent he is of any Crime and has the sympathies of two thirds of this City When you are Stabbed as you will bee you shall have the sympathies of the Dogs that knaw your Bones No more at present from Your friend till Death"

In 1843, Governor Bouck appointed John Worth Edmonds inspector of the State Prison at Sing Sing. It was with much hesitation he accepted the unthankful task, for the labor was to be enormous. Scarcely any discipline had been maintained in the prison, and the female prisoners had the entire control of the officers. Hundreds of the males were entirely idle, and the earnings fell short of the expenses over \$40,000. But within eighteen months a great change was effected, and the female portion of the prison was brought into complete subjection. Strict discipline was introduced and maintained among the males, and the annual deficiency in the revenue was reduced to less than a tenth part of the former sum.

This task, however, was comparatively easy in comparison with a reform of a different character, which Mr. Edmonds sought to introduce. He found that, for more than fifteen years, the system of government which had prevailed in our State prisons generally was one purely of force, and where no sentiment was sought to be awakened in the breast of a prisoner but that of fear, and no duty exacted from him save implicit obedience. No instrument of punishment was used but the whip, which had the effect of arousing only the worst passions of both convicts and officers—a practice of abominable cruelty, long engrafted upon our penitentiary system, revolting to humanity and destructive to all hope of reforming the prisoner. So thoroughly had it become engrafted that the most experienced officers insisted there was no other mode by which order could be kept. Passion, prejudice and selfishness, all combined to place obstacles in the way of this proposed reform, and its progress was very slow. Yet it steadily advanced, and when, in 1845, Mr. Edmonds resigned the office of inspector, his system was in the full tide of experiment. It was continued by his successors, and is the governing principle in all our State penitentiaries. With a view to carry out his plans, this gentleman, in December, 1844, instituted a "Prison Discipline Society," the object of which was the reform of prison government and the aiding of prisoners—on their discharge—to lead honest lives. This society

is in successful operation, and enjoys a large share of public confidence.*

The following picture of our State prisons is by an Oneida lawyer:

“The State’s mode of reforming is not by the entreaty of parental tears. It is not by gifts and sugar-plums; but it is inexorable in its peculiar mode. Force occupies the position of entreaty, and power that of moral suasion. You take a man, young, middle-aged or advanced and examine him by a court and jury as to the extent of early deficiencies in his moral education, without making any abatement of time for the years spent in a college or worse than wasted in foreign or domestic travels; while on learning the magnitude of the neglected culprit’s wants, the State sends those of unfinished moral education to those walled universities, so distinguished for their lectures and degrees, where for five, seven or ten years the students are designated by closely-shaven heads and the striking uniform of Auburn and Sing Sing. The labors of these students are purely patriotic, being all done gratuitously for the benefit of the State. Here they study the art and mystery of making shoes for men and horses and other branches once despised but none the less useful. A part of the formula of discipline in these favored institutions is derived from one of the ancient schools of Greece: the entire silence of the tongue is enjoined. No debates are held, no orations delivered by the students here. No ! that youth who only used his tongue to express ribaldry and profaneness, to slander his fellow, to insult his parents and to defame truth by boasting and lying, here is still. There is no further use for that tongue during his unfinished educational course. Society is no longer compelled to be pained with the lewdness it uttered, the profanity it expressed, the falsehoods it proclaimed or the vulgarity it published. The gentle correction of cowskins, dark dungeons, temporary starvation and shootings from the sentinels on the walls for leaving the institution without graduating, are some of the applications of gov-

* See a well-written sketch of John Worth Edmonds, Esq., in 4 Livingston’s U. S. Monthly Law Magazine, 335.

ernment to complete neglected education; while some carry their diplomas on their backs, written in a hand so bold and enduring that they can never be erased."

There is the true ring of charity in the following remarks of Gulian C. Verplanck, when sitting in the Court for the Correction of Errors on the case of Ezra White, charged with murder:

"Take the case of the unfortunate young man before us. Suppose the public prosecutor had been permitted to show, as possibly he might have been able to do, that the prisoner had led a careless and dissolute life, even beyond the ordinary license which might be pardoned to the levity of youth, the fault of defective education and the absence of parental restraint. What would be the effect of such evidence? Probably to excite in the mind of some judge or juror prepossessions against the prisoner and to induce them to give the greatest weight to all the testimony adverse to him. Yet to those who know or who feel how mysteriously virtue is mixed with vice in human nature; how much of evil there is in the good; and how much of better feeling is often left in the profligate: what does calm and sound reason infer from such testimony as to any malignity of heart capable of deliberate, premeditated murder on slight provocation?" (*The People v. White*, 24 *Wendell's Reports*, 520.) This prisoner, although sentenced to be hung, was twice respited, and through the untiring exertions of his counsel, the late Mr. David Graham, jr., his punishment was commuted to a brief term of imprisonment at Sing Sing.

He who looks up to the walls of a prison and has a sympathy for the failings, the insanities of his fellow-men, is apt to believe that all within are mentally suffering, not only from a silence palpable and oppressive, but also from those snake-like thoughts which sometimes twine about and clot the brain.

• And yet it may be that, from our own humanizing form of education and sympathies, we who thus messenger our thoughts within the donjon, really often feel more mentally than do the condemned—what we fancy privation may not even be observable by many of them.

Probably the greater proportion of those who, to use a phrase

we have sometimes seen in newspapers, "look out on society from a grated window," yearn most for mere outward nature and feel this more than they do their crimes or the staining consequences flowing from them.

The following, which had been written by a prisoner upon the wall of an English jail, is full of the desire for outward nature:

"A PRISON.

"No sun, no moon,	"No end to any row,
No morn, no noon;	No top to any steeple;
No sky, no earthly blue,	No indication where to go,
No distant-looking view.	No sight of familiar people.
No road, no street,	No cheerfulness, no healthy ease,
No t'other side of the way;	No butterflies,
No dawn, no dusk,	No bees.
No proper time of day.	"—BOW STREET."

Byron has something of this in his Prisoner of Chillon:

"—all was blank and bleak and gray;
 It was not night, it was not day;
 It was not even the dungeon light,
 So hateful to my heavy sight;
 But vacancy absorbing space,
 And fixedness without a place.
 There were no stars, no earth, no time,
 No check, no change, no food, no crime,
 But silence and a stirless breath
 Which neither was of life nor death;
 A sea of stagnant idleness,
 Blind, boundless, mute and motionless."

By the way, we have discovered that the prisoner with his "No sun, no moon," had been a reader of poetry and must have come across Hood's "No" poem on November, which runs thus:

"No sun, no moon!
 No morn, no noon;
 No dawn, no dusk, no proper time of day—
 No sky, no earthly view,
 No distance looking blue,
 No road, no street, no t'other side the way;

No end to any row—
 No indications where the crescents go.
 No top to any steeple,
 No recognitions of familiar people;
 No courtesies for showing 'em—
 No knowing 'em.
 No travelling at all, no locomotion—
 No inkling of the way, no notion;
 No go by land or ocean.
 No mail, no post,
 No news from any foreign coast.
 No park, no ring, no afternoon gentility:
 No company, no nobility.
 No warmth, no cheerfulness, no healthful ease;
 No comfortable feel to any member—
 No shade, no shine, no butterflies, no bees;
 No fruits, no flowers, no leaves, no birds—
 No—vember!"

The following is a strong illustration of the want of proper feeling in a criminal. During the late execution within the walls of the prison, in New York, of Francisco Ferrero dos Santos, for murder, a prisoner, also under death-sentence for a like crime, managed to borrow a looking-glass and so place it on the outside of the slit or window of his cell as to command a view of the hanging of Ferrero.

This allowing of the mind and the eye to go out of their way and seek the gallows-tree, with a view to observe death-struggles, is shockingly mysterious and unaccountable. And yet, it is not only done, but those who go have all their faculties absorbed at the sight as completely as had the Hunchback of Notre Dame at the hanging of the gipsy girl; while, as to things around, they are as unfeeling and unheeding as was this Hunchback, at the exciting moment, to the struggling priest close by, from under whose nails the blood was spirting as he clutched, vainly clutched, projecting stone and gutter to save himself from the awful descent that mangled and killed him.

When John Hendrickson was about to be executed at Albany (1854), for the murder of his wife, a "gentleman" from the country

applied to the Sheriff for permission for his wife to be present. The Sheriff replied that the law forbade him "the pleasure" of gratifying so lady-like a curiosity. Which shocks most, this woman's wish or a husband's application? Do we not think too much of ourselves as *human* beings? No doubt this husband was proud of this wife, and she, probably, was a good protective mother; so is a tigress.

A witty writer has treated the going to an execution of a criminal so satirically as to illustrate it as a means to pass away time

"My Lord Tomnoddy got up one day;

It was half after two,

He had nothing to do,

So his lordship rang for his cabriolet.

Tiger Tim

Was clean of limb,

His boots were polish'd, his jacket was trim;

With a very smart tie in his smart cravat,

And a smart cockade on the top of his hat;

Tallest of boys or shortest of men,

He stood in his stockings just four feet ten;

And he ask'd, as he held the door on the swing,

'Pray, did your lordship please to ring?

My Lord Tomnoddy he raised his head,

And thus to Tiger Tim he said,

'Malibran's dead,

Duvernay's fled,

Taglioni has not yet arrived in her stead;

Tiger Tim, come tell me true,

What can a nobleman find to do?

Tim look'd up and Tim look'd down,

He paused and he put on a thoughtful frown,

And he held up his hat and he peep'd in the crown;

He bit his lip and he scratch'd his head,

He let go the handle and thus he said,

As the door, released, behind him bang'd,

An't please you, my lord, there's a man to be hanged!

My Lord Tomnoddy jump'd up at the news,

'Run to McFuze,

And Lieutenant Tregooze,

And run to Sir Carnaby Jenks of the Blues.

Rope-dancers a score,
 I've seen before,
 Madame Sacchi, Antonio, and Master Blackmore;
 But to see a man swing
 At the end of a string,
 With his neck in a noose, will be quite a new thing.'"

White was found guilty of the murder of his father in Genesee County. The defence was monomania; but he, himself, laughed at it and declared he never was crazy for a minute in his life. The only question he asked his counsel during his trial was, whether they thought anybody would steal his hat—a shocking one, worth some eighteen cents—which lay on a table in a distant part of the room. He was calm and unmoved during his trial. Some days after sentence, he caught a mouse in his cell; and immediately set to work, erected a gallows and hung it, in the same manner as he expected to be executed. There seemed, up to the last, nothing of the bravo about him and he was looked upon as the most quiet and orderly criminal in the jail.

In December, 1820, at a Court of Oyer and Terminer held at the City of New York, Arunah Randall, aged sixty-five years, was found guilty of manslaughter, and condemned to ten years' imprisonment at hard labor. When the prisoner had been taken from the court back to prison and the keepers were preparing him for confinement, in the usual way, by shaving off his hair, as the locks fell, he took some in his hand and bursting into tears, cried out:

"Little did I think that these gray hairs would ever come to this!"

Contrast, in a heartless Scotch prisoner: He, lately, handed to the jailor at Greenlaw prison, Berwickshire, the following stanza, written in blood, which he had obtained by cutting his fingers with a piece of tin taken from his lantern:

"So, then my trial is over
 And my sentence it is past.
 Farewell to thee, old Scotland,
 You've cooked my goose at last."

A young man was sentenced to Sing Sing prison for five years; and the term would have expired in a few days. He was employed in grinding files. The grindstone used was driven by steam. He had increased the velocity of the stone to enhance the amount of his labor, doubtless with the hope of earning something over for himself to use when he should once more feel fresh air and see the sunlight. He was killed instantly by the bursting of the grindstone; and buried among the undistinguishable graves in the felon burial-ground. Well, suppose it was the felon's graveyard: is not "the burial-ground, God's acre?"

MR. MARTIN S. WILKINS AND MR. GOUVERNEUR MORRIS.

The late Martin S. Wilkins may be classed among the most remarkable men of the legal profession in the City of New York during the first quarter of the present century. He was not so profoundly skilled in the science of the law as many of his contemporaries, but was distinguished for his ready wit, off-hand manner, inexhaustible fund of anecdote and good-humor and a high sense of honor and truthfulness, evinced in all his intercourse with his fellow-men. His ordinary conversation was very attractive and amusing, although sometimes, perhaps, in the estimation of a casuist and religionist, bordering on the free. In person he was tall, straight and squarely built, denoting great muscular power, head always erect, the features of his face such as may be called angular, enlivened by dark, brilliant eyes. Such mental and physical qualities in an advocate, especially before a jury, are advantages of no mean account and they were largely possessed by Mr. Wilkins.

An instance of their display may here be given. About the year one thousand eight hundred and ten, Mr. Wilkins brought an action in the Supreme Court of the State of New York in favor of a Miss Dunbar of Jamaica, Long Island, against the Rev. Mr. Clowes, of the Episcopal Church, for a breach of promise of marriage. The young lady was very respectably connected and had many warm friends who espoused her cause and insisted on its

prosecution, the more especially as Mr. Clowes had been heard to make some disparaging remark touching her character as the reason of breaking off an engagement. In this he was supported and justified by many of his friends and brethren of the Church. On the other hand, her friends became the more indignant and urged on the prosecution. Two of the ablest counsel in the city were associated with Mr. Wilkins; and Thomas Addis Emmet and others were for the defendant. The trial took place before Judge Thompson, at the old City Hall, in New York. It attracted public attention; and the court-room was thronged every day. When the evidence was closed, the judge announced he should allow but one counsel on a side to address the jury. Mr. Emmet proceeded on behalf of the defendant and made one of his greatest speeches. He ably pressed, in argument, that the action was brought against his client, not so much for the purpose of vindicating the character of the plaintiff from the alleged aspersions which, in themselves, were trivial, as for the purpose of injuring the defendant in public estimation and driving him from the Church and that a verdict for the plaintiff would be used as a lever for such unholy purpose—and he entreated the jury to spare the defendant and the Church from such a degradation.

Mr. Wilkins, then, proceeded to address the jury in reply, having informed his colleagues that he would take upon himself the responsibility of the remaining portion of the cause. It was now evening and lights were brought in. The court-room was crowded; and Wilkins laid himself out in the most earnest and eloquent manner. He seemingly stripped the defendant of his clerical robes and held him up to view as a wolf in sheep's clothing. The moment he closed, there was a burst of applause. Then was heard a voice from the bench calling to order and threatening punishment for such a breach of decorum. The result was a verdict for the plaintiff of four thousand dollars.

It was not always in behalf of his own clients that Mr. Martin S. Wilkins's sympathy was manifested. Such a feeling would sometimes appear to be beyond his control. An instance of this occurred in the trial of a cause in Queens County. An action

was brought by a rather aged father for the seduction of his daughter. Mr. Wilkins was retained by the defendant. He had succeeded in proving, by several witnesses, the daughter's illicit intercourse with others than the defendant; and while commenting, with severity, on this feature of the case, his eye seemed accidentally to fall upon the face of the father, in which despair was strongly depicted. He immediately checked himself; and remarked to the jury that he had been speaking of the case as if it was the daughter who was the party seeking damages at their hands, but he was now reminded it was the father who was the sufferer and plaintiff in the action and he could not but feel the strongest sympathy for him in this his hour of trial and distress—and while he thus spoke his eyes became suffused and as he took his seat, tears trickled down his cheeks. The opposite counsel took advantage of the circumstance; declined to sum-up, saying only, he was content to leave the cause with the jury on the merits as they appeared in the closing remarks of the counsel for the defendant. A verdict for the plaintiff followed.

In Queens County, there was the trial of an action of trespass for killing the plaintiff's dog; and the main question was, as to its value. Martin S. Wilkins was of counsel for the plaintiff. The defendant had introduced witnesses to prove the dog's naturally vicious disposition. One witness testified that the dog was very vicious towards him, for whenever he passed along the road, by the plaintiff's house, this dog was sure to run out and bark at him most furiously. The person giving this evidence was a respectable man enough, but, unfortunately for himself, a very hard-visaged, uncouth-looking person; and this was so palpable that Wilkins could not refrain from asking him, whether dogs in general did not bark at him as he passed along? The question produced a loud laugh throughout the court-room; and the witness, feeling the force of the ridicule he was exposed to, refused to answer the question. The counsel, however, had all the benefit he wanted from it and, therefore, did not press it—but it left the witness in a very angry mood. When the trial was over and they had left the court-room, this man approached the counsellor and charged him with

intentionally insulting him, for which he required an apology. Mr. Wilkins, putting on one of his pleasant looks, replied:

"Oh, my friend, it was only a joke; and if you won't be angry, I'll tell you one worth two of that."

And then he went on to relate some ludicrous story about a man and his dog, which set all the bystanders laughing most heartily and the offended person among the rest—so that he was soon over his anger and thought no more of the insult.

Mr. William Slosson, of the New York Bar, was remarkable for his slight, thin figure and quiet movement—he would come like shadow, so depart; and Martin Wilkins would speak of him as "the invisible."

One morning, Mr. Wilkins came into the Supreme Court General Term; and wishing to get a seat at the table in front of the bench, he waited a moment until he saw a vacant chair and then walked towards it, but Mr. Slosson, who was nearer, glided into its seat. Wilkins at once returned to a bench where two or three gentlemen were sitting, remarking as he did so:

"I thought I saw an unoccupied chair yonder; but, when I got near, I discovered my invisible friend Slosson in it."

Mr. Wilkins was connected by marriage with Gouverneur Morris, of Morrisania. This gentleman lived so long a bachelor that his relatives began to entertain strong expectations of succeeding to his large estate as heirs-at-law. In this they were disappointed, by his marrying and having a son. Soon after the latter event, Wilkins happening to be present where several of the relatives were assembled and the conversation turning on that subject, a question was asked as to the name of the young heir—when some one of the company observed, "Of course it will be 'Gouverneur,' after his father."

"Oh, no," observed Wilkins, "that will not be appropriate. He deserves to be called Kut-us-off, after the famous Russian general."

Mr. Robert Sedgwick, of the New York Bar, was interested in coal lands within the State of Rhode Island; and wanting to bring their material into the market, he sent a quantity of the coal to

Martin Wilkins. Afterwards, he asked the latter, whether he would give him a certificate as to it.

"Most cheerfully." So, Wilkins sat down and wrote somewhat as follows:

"This is to certify that I received from Robert Sedgwick, of New York, Counsellor at Law, a quantity of coal from his mine in Rhode Island and tried it in my fire-places for several weeks; and having done so, I can confidently recommend to all my friends to hurry into the State of Rhode Island on the day of judgment, being satisfied it will be the last portion of the earth to burn."

Mr. Wilkins and Mr. Alexander L. Macdonald, another member of the New York Bar, were in New Jersey at an early hour of the morning. They had got off the beaten track, and, coming to a cottage, asked the good woman who occupied it, whether she could give them a breakfast? Yes; and soon it was on the table, consisting mainly of sausage-meat. Mine hostess made her best excuses for putting it on uncased; adding, she had used all the guts of her pig in sausages just sent to market.

"Oh, my dear madam," said Wilkins, "pray do not distress yourself; you furnish the sausage-meat—we'll find the guts."

The editor of a Massachusetts newspaper asked a farmer's wife how she made sausages?

Answer.—"Take your in'ards, scrape 'em and stuff 'em."

In a village some sixty miles from New York, there was a sign, which read, in large letters, "Meat Market," and underneath, in very small ones, "Also, all kinds of sausages."

Mr. Wyckoff, of Jamaica, Long Island, related an anecdote connected with Martin Wilkins's early life—he and Wyckoff were schoolboys together there. They were walking down to the meadows near Jamaica Bay. A dashing fellow came driving down with his dog and gun in pursuit of birds, and inquired of the two boys, "if there was hard-bottom down there?"—pointing in the direction he wished to go.

Young Wilkins replied, "Yes."

On he went and presently his wheels cut through and sank nearly to the hub. The man looked back at the boys and in

angry tones, exclaimed, "You told me there was hard-bottom here!"

"So there is," responded Wilkins, "but you have not come to it yet."

Mr. Wilkins was a firm believer in man's spiritual nature and qualified, through this medium, to hold communion with the invisible, spiritual world and, consequently, to receive messages and communications directly therefrom. He got confirmed in this belief, from a remarkable visitation. He was in the habit of attending the sittings of the courts at White Plains, in Westchester County. At the close of the business of the day, he would drive to the house of his friend Major Popham, a few miles off, to spend the night. On one of those occasions, after spending the evening sociably with the family, he retired to the room on the second floor which he was accustomed to occupy—and, soon after getting into bed, he fell asleep. Towards midnight, he was awakened by the presence of a light in the room; and as he opened his eyes to it, he saw, distinctly, a form in human shape and apparently in female attire standing before him on a line between him and the window—and an audible voice, addressed to him, announced that one of his children, at home, was in a dying condition. The figure and light then disappeared, seemingly passing off through the window. He immediately arose, dressed himself, called up Major Popham, told what had occurred, had his horse put to the gig and drove home to New York, which he reached about sunrise—and there found his child, which had been taken suddenly ill, just then expiring. In relating this to his friends, he always insisted that it was not a mere dream or chimera of the imagination, but an actual vision, a reality. And in all, except what had occurred in the bedroom, he was corroborated by Major Popham and members of his family.

Some two or three years after the happening of the event just mentioned, a warm personal friend of Mr. Wilkins's was with him at a court in White Plains, when, as was his wont, he took that friend with him to the same hospitable mansion of the Popham family to spend the night. As they were retiring to their respective rooms,

"Here," said Wilkins, "come into this room a moment. I want to tell you what once happened to me as I was sleeping in this bed"—and he narrated to that friend the particulars of the extraordinary visitation, with the seriousness and solemnity due to truth; and that he was sincere and truthful in his account of it, such friend has never had a doubt.

Here is a charming out-of-court anecdote of Mr. Martin S. Wilkins, wherein he figures as a good Samaritan in an eminent degree. Governor Tompkins used to take great pleasure in relating the story. He and Wilkins had been attending a term of court at Bedford, in Westchester County. They were returning together in a one-horse chaise or gig, on the road leading to White Plains. Some miles from the latter place, they came up to a man, sitting by the roadside, unwell and unable to move. He had a drove of cattle in charge, which was wandering from him. Seeing that such was his condition, Wilkins instantly said:

"Tompkins, you must take this man with you in the gig—hasten on to White Plains, procure a physician and see that the poor fellow is properly cared for. I will take charge of his cattle and bring them on after you."

This Mr. Tompkins did. Late in the afternoon, the weather oppressively warm, a drove of cattle was seen approaching White Plains. Behind them, a man covered with dust and perspiration, flourishing a long stick and shouting to the cattle, "go-'long, go-'long." It was the Christian gentleman, the distinguished lawyer turned drover for the time being, happy in the performance of so humble a duty. Where, outside of the Bible, is there a more beautiful incident than the one we have given? Thanks to our esteemed friend ex-Judge William T. McCoun—he will have the thanks of all our readers, for sending it to the author. Well hath Longfellow said:

"It is the heart and not the brain,
That to the highest doth attain."

We are also indebted to Mr. McCoun for the introductory sketch of Mr. Wilkins's personal appearance which we have given.

GOUVERNEUR MORRIS.

The late Gouverneur Morris, father-in-law, as we have mentioned, of Mr. Martin S. Wilkins, was a fine specimen of a lawyer, attaining to high position. We find him a student-at-law in the office of William Smith, the historian of the colony. Then, a delegate to the Provincial Congress of New York. He served on a committee to confer with General Washington respecting the manner of his introduction to the Congress; became Minister-Plenipotentiary to France, and on his return he shone in the Senate of the United States. It has often been asserted by General Washington's intimate friends and even by some of his biographers, that few men had the nerve to approach him with familiarity. The following anecdote, in which Gouverneur Morris attempted it, is in point. He, in conversation with some friends on this subject one day, when Congress sat in New York and Washington occupied the house then in front of the Bowling Green, denied the correctness of this opinion and offered to test the truth of it at once by joining him in the garden, where Washington was walking alone and in their view. A bet was made and Mr. Morris went immediately into the garden to decide it. He approached the President from behind and as he came up alongside, gave him a familiar tap on the shoulder, at the same time addressing him familiarly with, "How do you do, sir?"

Washington turned his head and echoed back "How do you do, sir?" with all that dignity which distinguished him from all other men. Morris was petrified and, returning to his friends, declared that nothing would tempt him to repeat the experiment. (Thomas's Reminiscences. Hartford, 1840.)

Chancellor Kent, in his address delivered before the Law Association of New York, 1836, refers to a contest between Hamilton and Gouverneur Morris in the case of *Le Guen v. Gouverneur and Kemble*. (1 *Johnson's Cases*, 436.) The latter, a relative of one of the defendants, gratuitously appeared as their counsel. The claim involved was very large in amount; and there was in the case a mass of facts involving a complicated charge of fraud, which was enough to command the exertions of the keenest sagacity, a

critical severity, shrewd retort and pathetic appeal. A Jewish house was concerned in the transaction and that led to affecting allusions to the character and fortunes of that most ancient and once highly-favored and then deeply-chastised race. Some of the negotiations happened in France, and that produced references to the tremendous revolution which was then still in its fury, and whose frightful ravages and remorseless pretensions seemed to overawe and confound the nations.

"Mr. Hamilton and Mr. Morris equally resorted for beautiful illustrations to the best English classics—to Shakespeare, Milton and Pope; and when the latter complained that his long absence from the bar had caused him to forget the decisions, the former accounted for it on another principle and relied on the poet's authority that

"Where beams of warm imagination play,
The memory's soft figures melt away.'"

Mr. Gouverneur Morris, on being asked for his definition of a gentleman, replied by repeating Poet-Laureate Tate's paraphrase of the fifteenth Psalm:

"Tis he, who every thought and deed
By rules of virtue moves;
Whose generous tongue disdains to speak
The thing his heart disproves.
Who never did a slander forge,
His neighbor's fame to wound;
Nor hearken to a false report
By malice whispered round.
Who vice, in all its pomp and power,
Can treat with just neglect;
And piety, though clothed in rags,
Religiously respect.
Who to his plighted vows and trust
Has ever firmly stood;
And, though he promise to his loss,
He makes his promise good.
Whose soul in usury disdains
His treasure to employ;

Whom no rewards can ever bribe
The guiltless to destroy."*

This Psalm was copied by Thomas Jefferson in the smallest handwriting and neatest manner into a commonplace-book which he was in the habit of frequently consulting, and we find it at the end of a letter on moral conduct which he wrote to T. Jefferson Smith, thus entitled : "The portrait of a good man, by the most sublime of poets, for your imitation."

Mr. Morris had a leg amputated. While he was undergoing the operation his servant was standing by weeping.

"Tom," said the master, "why are you crying there? It is rank hypocrisy. Your wish is or should be to laugh: for, in the future you'll have but one shoe to clean instead of two."

Years ago toasts were given after dinner and during the dessert. At the table of the elder President Adams, Gouverneur Morris, then a Senator in Congress from the State of New York, was one of the invited. It was at the time of the feud existing between the President and General Hamilton, arising from the animadversions of the latter upon the sudden compromise of our differences with the French Republic. Mr. Morris was called on by Mrs. Adams for a toast.

"Madam," said he, "I will give you the health of my friend Hamilton."

The lady indignantly replied: "Sir, that is a toast never drank at this table."

* In the Book of Days (2 vol., 210) there is an article on new versions of the Psalms; and, in it the following: "A severe critic has characterized Tate as 'the author of the worst alterations of Shakespeare, the worst version of the Psalms of David and the worst continuation of a great poem, Absalom and Achitophel, extant;' but this is going a little too far in reference to the Psalms. These translations are, nevertheless, rather spiritless. Dr. Watts received a letter from his brother, in which the latter said: 'Tate and Brady still keep near the same pace. I know not what beast they ride (one that will be content to carry double); but I am sure it is no Pegasus. There is in them a mighty deficiency of that life and soul which are necessary to rouse our fancies and kindle and fire our passions'."

"Suppose, then, madam," was the cool rejoinder, "we drink it now for the first time?"

"Mr. Morris," exclaimed the excited hostess, "if you persist, I shall invite the ladies to withdraw!"

"Perhaps," retorted the imperturbable Senator, "it is time for them to retire."

The signal was given and as the ladies rose in obedience to it, the Senator sprang from his seat and stumped on his wooden leg to the door, threw it wide open and with his constitutional boldness, fairly bowed Mrs. Adams and her lady guests out of the room. Who was wrong in this case?

After his retirement from public life, Mr. Morris, so long as he remained a bachelor, dispensed a liberal hospitality at his seat at Morrisania. He was noted for the excellence of his *cuisine* and for the quality of his French and German wines. He sometimes extended his invitations to rising young men. One of the latter at table inquired of the host—by way of hint for the introduction of cigars—"whether the gentlemen in France" (where Mr. Morris had been Minister) "ever smoked?"

"*Gentlemen* smoke nowhere," was the curt and emphatic answer.

A discussion arose in a mixed company, as to what constituted the best kind of clergyman. Gouverneur Morris declared, he was for an impassioned parson who would so make use of the devil as to frighten a man into the furthest corner of his pew.

JUDGE OAKLEY OF THE NEW YORK SUPERIOR COURT.

One of the last cases which Thomas J. Oakley argued before his appointment to the Bench was the famous one of *Gibbons v. Ogden*, before the Supreme Court of the United States, in which he supported the right of the State of New York to grant to Robert Fulton and his associates an exclusive privilege of navigating her waters with steamboats. His views had been sustained by every court of the State, although eventually overruled by the court of last resort. Of this case, and of Judge Oakley's part in

it, Mr. Daniel Lord thus spoke at the Bar meeting called upon his decease:

"Judge Oakley represented the mighty sovereignty of the State of New York. His associate was Thomas Addis Emmet. And by whom were they met? By Daniel Webster and William Wirt. These four men debated that question before Marshall, Story, Washington, Todd and Thompson. This I conceive to have been the culmination of professional eminence. What court could have so great a question? What court could be so greatly constituted? What court had the power of bringing private men to sit in judgment upon sovereign States? What court could feel the capacity to arbitrate among arguments of such talent, power and learning? No one will say that the argument of Mr. Oakley on that occasion did not place him at least in the front rank, if not superior to others. This was a noble achievement! It ought and it did satisfy his ambition at the Bar."

Mr. Francis B. Cutting was pressing upon Judge Oakley of the Superior Court of the City of New York, how, in relation to some vessel, facts already appeared on record.

"Your honor will find them in the proceedings in this action and also in the Apostles in the Admiralty Court."

"In the what, Mr. Cutting?"

"In the Apostles in the Admiralty Court, sir."

"Well," said the judge, with his usual heavy chuckle, which gave you the idea he was laughing from his stomach, "it is the first time I knew the Admiralty was a Christian Court."

Judge John T. Oakley, when a member of the New York Legislature, had the habit of employing himself in reading light literature, a habit, by the way, which remained to the period of his decease, and casual observers would suppose he was inattentive to the matters of legislation. He would, however, quietly rise, and in a cold yet clear manner drown what he went against. An Irish member from New York, when he saw Oakley rising to speak, would exclaim to his neighbor: "Now for the pail of cold water!"

Judge Oakley was presiding, when a replevin case came up. His

honor, from casual inattention and not hearing correctly at the moment, got the idea it was brought for a horse. The counsel for the plaintiff called a witness and asked him whether he knew for what particular thing the action was brought?

Answer.—“He did.”

He was then told to say where he saw it?

Answer.—“In defendant’s house.”

“What part?”

“In the second story.”

“What portion of the second story?”

“In the back bedroom.”

“Where was it in this back bedroom?”

Answer.—“Standing on a bureau.”

“What!” exclaimed the judge, “what do you mean, man? A horse in a second story bedroom standing on a bureau!”

“No, your honor, not a horse, a *harp*.”

When the building which stood in the rear of the City Hall, New York, was first altered into court-rooms for the Supreme Court and partly used by the Superior Court, the janitor who made the fires was Michael Shandy, a blundering and very zealous Irishman. The rooms were finished in cold weather, and Judge Edmonds of the Supreme Court complained to Michael, the first day they were used, that they were cold, and he was told to make his fires earlier the next day. So, the next day, when the judge went down to hold his court, lo! the building had been on fire during the night and every thing was in confusion. The first man the judge saw was Michael, who was watching for him with a very rueful countenance. In answer to Judge Edmonds’ inquiry as to how it happened? he said he couldn’t for the life of him imagine: because, his honor had complained of the cold the day before and he had staid down till midnight and filled the heater, or as he called it the stove down there in the cellar, choke-full and had watched it until it got red hot and, then, he had gone into the court-room and shut all the holes (registers meaning) so that there couldn’t a bit of it get out any way and then, satisfied he had just done the right thing, he went home and to bed.

There was no use in showing the poor fellow how he had, in his supposed laudable precautionary movements, probably caused the fire. He, for several days, labored under the thorough conviction that somebody had done it on purpose, but who or in what way it had been done was a mystery to him. A few days passed, and one morning, when the judge was approaching his court-room, Michael met him with a face beaming with joy.

"Ah! Judge," says he, "I've found out who did it."

"Indeed, Michael! who was it?"

With an air of great mystery, he whispered, "'Twas one of the judges."

"You don't say so! what made him do it?"

"'Twas jealousy, your honor. It's one of the judges of the other court. I seen him several days squinting round our new rooms with his eyes half shut and looking so cross! He did it, your honor, I know he did."

"Well, Michael, what's his name?"

"I don't know, but I have seen him sitting in the other court blowing up the lawyers."

The judge had a pretty good idea who Michael meant, but, enjoying the fun of the thing, said: "Describe him to me, so that I may know him."

"He wears spectacles, like your honor, but he carries his eyes half shut always; and he pokes about with his nose, saying nothing and looking so glum. He is an old man, short and thick-set; his hair is white and sticks up like the bristles on a hog's back, and he looks as cross as a bear."

"The description," observed Judge Edmonds, who gave this incident to the compiler of the present work, "was Chief-Justice O. to a T." The former told the latter of Michael's remarkable conclusion and they had a hearty laugh over it.

DAVID B. OGDEN.

The following was correctly said of Mr. David B. Ogden at a Bar meeting in New York, called to express respect for his memory:

"David B. Ogden was a man of peculiar simplicity of manners; opposed to every thing like display or pretension. His intellect, like his form, was majestic, but, clothed with simplicity. His disposition was amiable and kind. To his professional brethren he was open-hearted. In his domestic arrangements he was indulgent almost to weakness; but he was faithful to his duty. Had he been as faithful to his own interests, he would not have been compelled to labor at times, both in winter's cold and summer's heat, almost to the last of his life. Mr. Ogden was remarkable for the brevity of his statement and the conclusiveness of his arguments. No man ever received greater tribute."

Mr. Ogden was eighty years of age when he died.

There appeared to be great earnestness of purpose in Mr. David B. Ogden when before a court or jury. He condensed; never threw a sentence away or uttered an unnecessary one. Although he had a mild voice, he was a man of large muscular frame and there seemed to be so much concentrated force rightly directed, that he was called "the sledge-hammer."

He was scarcely ever seen in public studying a case or book; but we have been told by those lawyers who knew and travelled to Albany and Washington with him, that he would be quietly at work in his bedroom during the earliest hours of the morning.

Mr. David B. Ogden met a brother lawyer whose Christian name was Peter.

"Well, Peter, how are you?"

"I do not feel very smart."

"When did your friends ever think you so, Peter?"

The author was told by an old clerk of Mr. Ogden's that the latter had this peculiar propensity: he could never see a dog lying down in the street but he would go and tread upon its tail, even if it were on the other side of the way.

Mr. David B. Ogden resided for a time at Newark, New Jersey; and, from his perfect amiability and the power of all to approach him, came to be liked by the Dutch in and beyond its outskirts. One of them said—

"I like dat lawyer; for he is no gentlemans."

A member of a foreign Bar settled in New York. He had all to gain and, so far like Erskine, he felt his wife and children tugging at his gown. Not seeking acquaintances and almost a stranger, his first effort was in the Court of Chancery, at a time when feeble health and anxiety for the present and the future were upon him. Chancellor Walworth, in his naturally brusque manner, almost instantly interrupted, battled his points and so continued to check and distress, that our subject sank down as though struck by apoplexy. He was helped by some of the members of the Bar, but his mind was firm enough to struggle and soon rally; and the case in which he had been engaged was adjourned until the morning. Waving off further assistance, he got to his small office up three flights of stairs. While sitting there alone, pondering and sad and yet determined for the morrow, he heard a heavy and deliberate tread on each stair, a subdued knock, and in came the large form of Mr. David B. Ogden, to whom he had never before been introduced or spoken. This gentleman, with the most sympathizing expression, held out his hand; stated his having been in court; how he had felt shocked and grieved; uttered cheering words in a gentle and almost affectionate tone and as though a tear were in his eye; and ended by a comforting assurance that the one to whom he had thus voluntarily come would make his way. He did make his way; he is the author of this work; and his heart is in the grave of David B. Ogden.

Mr. Ogden was not in the habit of making extended briefs. He would have only his cardinal points on paper and leave his mind to elaborate. It was very different with Mr. Peter W. Radcliff, another able member of the New York Bar and a cotemporary. Mr. Radcliff made such very full and argumentative briefs, that Judge Ogden Edwards, while circuit judge, used to remark how they were like drag-nets, leaving nothing behind.

A word more about the estimable Mr. Radcliff. He resided in a house on the northwest side of Columbia Street, Brooklyn, and had a beautiful garden in the rear extending to the brow of the hill, which was filled with choice fruit-trees, vines, flowers and shrubs, in which he took great delight. By the grad-

ing of Furman Street, a great part of the slope of the hill, which had formed the support of his grounds, was cut off and the cultivated soil gave way—his garden was ruined and the beauty and charm of his residence destroyed. This was a severe blow to Mr. Radcliff and he never got over it. He sued the city for redress, but could not obtain it. The court held that the city had a right to grade the street and that his loss was *damnum absque injuria* (a damage without wrong). It was a hard case and seems to be hard law, but the Court of Appeals affirmed it. (Radcliff's Executors v. The Mayor, etc., of Brooklyn, 4 *Comstock's Reports*, 195, and Judge Greenwood's Personal Recollections.)



CHAPTER XI.

LAWYERS AS AUTHORS.

Who shall say that the State of New York is without authors of mark among her lawyers?

As proudly as Phidias's statue of Minerva presented, in her open palm, to the admiring gaze of the Greeks, the figure of the goddess Victoria, does the genius of the State of New York display an effigy of Kent.

As valuable to the mariners of old as was the flaming beacon upon the tower of Pharos, is, to those who now buffet the seas and have argosies afloat, the shining light of Wheaton.

The straight path to a free government is laid out and cleared and smoothed and made safe in the *Federalist*, mainly the work of two legal minds of the State of New York, Alexander Hamilton and John Jay. Speaking of the *Federalist*, Chancellor Kent says:

"No constitution of government ever received a more masterly and successful vindication. I know not, indeed, of any work on the principles of free government that is to be compared, in instruction and intrinsic value, to this small and unpretending volume of *The Federalist*; not even 'if we resort to Aristotle, Cicero, Machiavel, Montesquieu, Milton, Locke or Burke."

Webster, at a public dinner in New York, observed of John Jay:

"When the spotless ermine of the judicial robe fell on John Jay, it touched nothing less spotless than itself."

The present penal code of Louisiana was composed by one who had been born in the State and who practised in the City of New

York. It was the unassisted work of Mr. Edward Livingston and remains, to use the words of the editor of the New York Mercantile Advertiser, "an enduring monument of his profound learning and proves he was guided by a wise philanthropy and an earnest desire for the welfare of mankind."

Mr. Livingston settled in New York in the year one thousand eight hundred and one. He was, soon after, appointed District-Attorney of the United States and about the same time elected Mayor of New York. This latter office, which then required high judicial as well as executive talents, he held for upwards of two years. During his term, the city was visited by yellow fever. Mr. Livingston never for a moment deserted his post, but sacrificed his comforts and endangered his life in unremitting cares to lessen the calamity which had fallen upon his fellow-citizens. He himself was attacked by the pestilence and reduced to the very point of death. Recovering, he resigned the office which he held and determined to remove to Louisiana, which had lately been ceded to the United States by the treaty negotiated by his brother, Chancellor Livingston. Through this, came his penal code for Louisiana.

Washington Irving was admitted to the Bar of New York; but it would hardly be fair to claim him as a lawyer turned author; for he was never in active practice.

If De Witt Clinton, another lawyer, had not, Moses-like, caused the water to flow for the benefit of his fellow-creatures, and thereby made his own extended and glorious monument, his literary productions in the way of the sciences and the useful arts would have marked him as a great and good man.

As an author, Mr. De Witt Clinton could discriminate clearly and admirably; mark this, in his characters of Bacon and Coke:

"They were both eminent in their profession and attained the highest honors and most lucrative emoluments. Bacon became Lord High Chancellor of England and Coke a Chief-Justice. The former had ascertained the empyreal heights of literature; the latter had plunged into the learning of Norman lawyers and had become the oracle of the common law. The works of Bacon are

referred to as the oracle of truth and knowledge and as the revelation of genuine philosophy; while the black letter learning of Coke is an elusynian mystery to all out of the pale of the profession. The difference between a mere lawyer great in his profession alone and a great lawyer eminent in literature and science can never be more forcibly illustrated than in the exhibition of these celebrated men. Bacon enlivened, enriched and embellished every subject on which he wrote. Even flowers sprang up under his feet in his journey through the 'thorny paths' of legal investigation. But from Coke you must expect nothing but the dry, barren weeds of scholastic subtlety and Norman chicanery." (Discourse before the Literary and Philosophical Society of New York.)

Mr. Washington Morton, although a political opponent of Mr. Clinton, declared, in connection with the magisterial character of the latter, that were he to be put upon his trial for his life and could select his judge, he would choose De Witt Clinton.

In the home relations, nothing could be more beautiful than Mr. Clinton's purity, gentleness, fondness and affection. Some months after the death of a favorite and interesting son, when passing through the street and accidentally observing a lad resembling in dress, person and appearance his departed boy, so instantaneously and ardently were the father's affections kindled into flame that, excluding all other objects of sight, of hearing, or of thought, he eagerly rushed forward in pursuit of his supposed child, calling him to his embrace by the beloved name "Walter ! Walter !"

A short time prior to his death, Mr. Clinton emphatically observed to his physician and friend: "Doctor, I am not afraid to die."

Dr. William L. Stone, in a letter to Dr. Hosack, contained in an appendix to the Life of Clinton, gives a graphic description of the nautical procession got up to commemorate the completion of the Champlain and Great Erie Canal, and which procession passed down the whole length of the Hudson and reached the harbor of New York. And thus does Mr. Stone close:

"Never before was there presented to the eye of man so rich

and splendid an exhibition upon the water as was displayed on that day in the harbor of New York; and never in this country was there so brilliant a procession upon land or such universal demonstrations of proud and heartfelt joy among the people. And the prominent figure in this scene of public exultation was a man whose name will be preserved from the stroke of time by the benedictions of remotest posterity. One of those men whom one age is insufficient to appreciate, whose thoughts and purposes run through many ages, and whose minds are never fairly developed till their conceptions have been embodied in plans and measures which continue blessing a nation from generation to generation; that man, need I add his name, was De Witt Clinton."

A member of the New York Bar, Mr. William C. Prime, in traveller's trim, has given us admirable shadowings of the Great Pyramid, which stands as though it were a sundial for the world; the sphynx, sublime in its vast repose and insulation; and the drifting desert, drearily showing as though nothing had crossed it for ages save the deluge; while, at home, he has used the coinage of his brain so as to make a work on numismatics more sterling than our present currency.

We cannot forbear giving an extract from Mr. Prime's *Boat Life in Egypt and Nubia*, in which he neatly and graphically shows how his law came into practice when he was on his "Eastern Circuit."

"Every trade or business has its sheick. In Cairo, you will hear constantly of the sheick of the donkey-owners; and, in any dispute arising among your boys as to the division of the day's pay, you had nothing to do but to throw down your money and let them go to their sheick and settle it. Achmet, the boat-owner, had contracted with Reis Bariket to let him his boat for a year at a fixed rate per month, and he had had it a year and a half; and paid regularly. Just at this time freights were very high; and the boat was loaded with grain and ready to go down the river, when the rascally Achmet demanded the boat, on the ground that his contract was for a year and no longer; and although it ran on six months longer that was no reason why it

should six months more. The dispute waxed furious and came, at last, to the true Western style: 'You lie.' 'You lie yourself.' And then they went at each other. Loud shouts arose on all sides and the ghawazee danced in uproarious fun at the idea of a fight, and ran up to me with the most decided indications of their intent to embrace me as they had embraced every body else. I was sitting on a bench of mud a little elevated from the mud floor of the coffee-shop. I drew my feet up under me, and felt for the handle of a friend in my shawl-belt as the roaring, screaming mass came over towards me; and just then Abd-el-Atti made his appearance with koorbash in hand. A koorbash is Arabic for cow-hide, the cow being a rhinoceros. It is the most cruel whip known to fame. Heavy as lead and flexible as India rubber, usually about forty inches long and tapering gradually from an inch in diameter to a point, it administers a blow which leaves its mark for time. I had not been on the Nile a week before I learned that the koorbash was the only weapon of defence necessary to carry; and we soon gave up knives and pistols and took to the whip, of which all the people had a salutary horror. Abd-el-Atti made the crowd fly as he swung his weapon among them, and silence ensued with astonishing suddenness.

"How dare you make such a row in the presence of Braheem Effendi?' (The author, Mr. Prime.)

"Who is Braheem Effendi?' asked the reis of the boatmen, for up to this moment he had not observed that the stranger in the coffee-shop was a Howajji. This was owing not to my Oriental appearance so much as to the extremely shabby costume that I happened to have on that morning.

"Yonder he is.' The reis advanced immediately to pay his respects and apologize for the row. I had to be frank and tell him it needed an apology. Then he stated the difficulty and Achmet interrupted him and Reis Barikat sat silent on the ground just outside the shade of the coffee-shop, sullen as if he expected, as a matter of course, that, now his affair was referred to a rich man and his turgoman, the decision would be against him a poor devil without friends, right or wrong. Abd-el-Atti interpreted

rapidly and fluently, much to my admiration; and when I expressed surprise that any doubt could arise on so clear a case and asked if they had no law to punish the man who had sat, day after day, on the bank and seen his boat loaded while he waited for the opportunity to attempt extortion like this, old Reis Barikat looked over his shoulder at me in astonishment, gradually changing into delight and, then I proceeded to deliver a lecture on the doctrine of bailments, contracts executing and executed and all the law that could be applied remotely or nearly to this case or any case like it. The crowd around the coffee-house increased to not less than a hundred persons, all profoundly silent, while I amused myself by watching their dark faces, among which the bright countenance of one of the Ghawazee girls, white as a Circassian's and rosy as a Georgian's, shone conspicuous with delight, for she had all along favored the old reis, who had, doubtless, given her a free sail down to Cairo once in a while. The scene was worth remembering. I sat on the bench, over which a straw mat, crowded with fleas, had been spread. Abd-el-Atti stood before me. The sheick of the boatmen sat on the ground in front, Achmet by his side and the villagers stood crowded behind them. By the time I had finished my address, the Phantom was in sight; and rising from the seat of justice, I gathered my robes about me with as much dignity as might be and quietly walked down to the boat, leaving the reis and Achmet to the tender mercies of the sheick enlightened by American law. Abd-el-Atti remained behind and informed me that the sheick's decision was based on the profound views I had suggested, although to say the truth he didn't remember the precise order of them or what they were about. But he gave Reis Barikat the boat on the same terms for the voyage as before and administered justice to the feet of the extortionate owner."

Mr. William Sampson, naturally, brought from Ireland, associations which could not help remaining and dying with him. They strongly appear in his own memoirs, "printed for the author," in New York, 1807; and while general readers may not, at the present day, enter into all his severe sentences against England and

all the extreme cases connected with former wrongs native country and her inhabitants, we readily give, for the gratification of those who read our pages, a passage from his book, for there is in it a grand, sad tone like that which sweeps across the Psalms when those of old had to sing the Lord's song in a strange land, and a home pathos equalled only by Campbell in his *Exile of Erin*—the tears of Irishmen, as we know, have fallen fast on reading and on hearing recited *The Irish Emigrant*:

“Born in the country of affliction, his days were days of sorrow. He tilled the soil of his fathers; and was an alien in their land. He tasted not of the fruits which grew by the sweat of his brow. He fed a foreign landlord, whose face he never saw and a minister of the gospel, whose name he hardly knew. An unfeeling bailiff was his tyrant; and the tax-gatherer his oppressor. Hunted by unrighteous magistrates and punished by unjust judges. The soldier devoured his substance and laughed his complaints to scorn. He toiled the hopeless day and, at night, lay down in weariness. Yet noble he was of heart, though his estate was lowly. His cottage was open to the poor. He brake his children's bread and ate it sparingly that the hungry might have share. He welcomed the benighted traveller; and rose with the stars of the morning, to put him on his way. But his soul repined within him and he sought relief in change. He had heard of a land where the poor were in peace and the laborer was thought worthy of his hire, where the blood of his fathers had purchased an asylum. He leads the aged parent whom love grappled to his heart. He bears his infants in his arms. His wife follows his weary steps. They escape from the barbarous laws that would make their country their prison. They cross the trackless ocean—they descry the promised land; and hope brightens the prospect to their view; but happiness is not for him. The ruthless spirit of persecution pursues him through the waste of the ocean. Shall his foot never find rest, nor his heart repose? No! The prowling bird of prey hovers on Columbia's coast. Wafted on eagle's wings, the British pirate comes—ravishes the poor fugitive from the partner of his sorrows and the tender pledges of their love. See the haggard

eyes of a father, to which nature denies a tear, a stupid monument of living death. He would interpose his feeble arm, but it is motionless; he would bid adieu, but his voice refuses its office. The prop of his declining years torn remorselessly from before him, he stands like the blasted oak, dead to hope and every earthly joy.

“Was it not, then, enough that this victim of oppression had left his native land to the rapacity of its invaders? Might he not have been permitted to seek a shelter in the gloom of the wilderness? No! the ruthless spirit of persecution is not yet sated with his sufferings. The torments of one element exhausted, those of another are now prepared for him. Enslaved to scornful masters, the authors of his misery; and forced to fight the battles of those his soul abhors. Death that relieves the wretch, brings no relief to him, for he lived not for himself, but for those more dear to him than life. Not for himself does he feel the winter's blast, but for those who are now unprotected, houseless and forlorn. Where shall his wife now wander, when maddened with despair? Where shall his father lay his wearied bones? Where shall his innocent babes find food, unless the ravens feed them? Oh, hard and cruel men! oh, worse than hellish fiends!—may not the poor find pity? What's he that now reviles them? beshrew his withered heart. Oh, Stuart! oh, West! children of genius, sons of Columbia, where are now your pencils? Will you profane the bounteous gifts of nature, in flattering the mighty and the great, and withhold a nobler aid to the cause of the poor and the afflicted?”

A professional friend, who called our attention to the above and who knew Mr. Sampson, says, the latter was not only a scholar but a gentleman of the most finished manners.

We are not able to point out any remarkable prose work of fiction whose author was or is a lawyer of the State of New York. This is singular, for no class of men appreciate better or enjoy more the perusal of novels than members of the Bar. In other countries such works of high excellence emanate from men of the legal profession.

Students in law-offices start with romance and verse and, so, come to Colman the Younger's Confession:

"Then much in dramas did I look ;
Much slighted Time and great Lord Coke ;
Congreve beat Blackstone hollow ;
Shakspeare made all the statutes stale ;
And, in my crown, no pleas had Hale,
To supersede Apollo."

We read lately, in a St. Louis newspaper, how a man had been sent to the penitentiary for stealing "one piece of poetry" valued at five dollars. It is very possible this one piece of poetry was the production of an embryo lawyer, for we never knew any thing versified by such a hand, worth more—although we, in our student days, fancied we wrote immortal verse.

It has been insisted that a poem is an action or suit and often a long and tedious one. Thus, the *Iliad* is an action of assault and battery brought by the Greeks against the Trojans; the *Jerusalemme* an action of ejectment commenced by the Christians to recover possession of the Holy City from the Pagans; and the *Æneid* a suit in Heaven's Chancery, in which Juno is plaintiff and *Æneas* and others defendants.

If poems are actions, it might be supposed that matured lawyers would figure well in this direction and yet nothing from any of them of surpassing excellence in lofty rhyme appears. They are incessantly digging into and intrenching dry soil, like those who bank-up celery to blanch it and have scarcely the opportunity to see and cull flowers on the surface or to look up to the sky and enjoy lazy-pacing clouds. Cicero has said, "We are born poets; we become orators." An advocate may have been and may be eloquent and, while declaiming through a broad and variegated field, give out poetic thought, showing how thin and transparent is the division between the poet and the orator: still, where have we had, where have we one who, with measured tread, to use the words of Johnson in his life of Milton, has "sent his faculties out upon discovery into worlds where only imagination can travel and delighted to form new modes of existence and furnish sentiment and action to superior beings, to trace the counsels of hell or accompany the choirs of heaven?"

Barristers in England and counsellors here have shown high scholarship in imitations and translations from Greek and Roman poets and there—an end!

We are thinking only of the few who, to use the hackneyed quotation, “were not born to die.”

There are, however, in this our profession and in connection with the poetical, very apt harvest men, who have used a good sickle, tied up fair sheaves and can sing a capital harvest song. There are workmen in the world, the result of whose labor is pleasant to look upon, although they may not have built St. Peter's or chiselled the Laocoon.

We know not whether vulgar prejudice stops the lawyer from indulging in natural poetic flights; but we are aware there are many living for and worshipping dollars and even cents, who believe how he who loves poetry cannot be a good man of business and that he who writes verses is almost a sinner, must be a vagabond and may be a rogue. The author claims to be allowed to mention a slight anecdote in point, although at his own expense. Several years ago, at a time when he was somewhat unhappy, moody, he wrote and published verses. A friend happened to mention his name and recommended him professionally to one of these dollar-and-cent worthies, who immediately exclaimed—

“Why! I certainly have heard expressions adverse to that person—there is something against his character.”

“You must be mistaken,” said our friend; “I believe him to be a correct man; he is a scholar and writes,” our indulgent friend chose to say, “very pretty poetry.”

“Oh! that is it,” responded Mr. Dollar-and-Cents; “I knew there was something against him: I remember now; yes, he writes poetry!”

“My commercial career,” says Hood, “was a brief one and deserved only a sonnet in commemoration. The fault, however, lay not with the muses. To commit poetry is a crime ranking next to forgery in the counting-house code and an ode or a song, dated Copthall Court, would be as certainly noted and protested as a dis-

honored bill. I have even heard of an unfortunate clerk who lost his situation through being tempted by the jingle to subscribe under an account current:

“‘Excepted all errors
Made by John Ferrers,’

his employers emphatically declaring that poetry and logwood could never exist in ‘the same head.’”

In a very late case in the Supreme Court of New York, where a woman-plaintiff attempted to set aside an instrument, her counsel by way of encouraging the idea that there was latent insanity in his client, proved she had written a book of poems.

Robert Comfort Sands had been a student in the office of Mr. David B. Ogden and practised law in New York. He was familiar with the Greek tragedians; was an Italian, Spanish and French scholar and, a little before his death, he began to read Portuguese authors.

About the time when the death-stroke was coming, Mr. Sands was preparing an article on Esquimaux literature for the New York Knickerbocker Magazine. On the seventeenth of December, 1832, he sat down to the work of composition and had merely written with a pencil the following line, suggested probably by some topic in the Greenland mythology:

“Oh! think not my spirit among you abides,”

when he was suddenly touched with apoplexy, paralyzing his “sword-arm.” He rose, opened the door and attempted to pass out of the room, but fell on the threshold. On being assisted to his chamber and placed on a bed, he was observed to raise his powerless arm, look at it and burst into tears. On examining the paper upon which he had written the above line, there were observable several irregular pencil-marks, extending nearly across the page, as if traced by a hand that moved in darkness or no longer obeyed the impulse of the will.

It is too late a day wherein to praise Sands’s *Yamoyden*. We cannot, however, forbear to give one stanza from the Invocation to

Evening. The very words seem to mingle with the twilight and sink away into its silence:

“Hour of devotion! like a distant sea,
The world's loud voices faintly murmuring die;
Responsive to the spheral harmony,
While grateful hymns are borne from earth on high.
Oh! who can gaze on yon unsullied sky,
And not grow purer from the heavenward view?
As those, the Virgin Mother's meek full eye
Who met, if uninspired lore be true,
Felt a new birth within and sin no longer knew.”

Although some one has remarked how a sonnet always reminded him of a reel in a bottle, and others have attempted to disparage it, few can write a good one, simply because their minds have not fourteen golden threads to work with, and even if they had they cannot fashion them into a perfect piece of embroidery. It will not do to despise a sonnet because of its being but a miniature. The humming-bird is as radiant as an outspread peacock, while condensation makes it exquisite. Benvenuto Cellini's trinkets are more sought after than his larger conceptions. And we believe the sonnets of Milton and of Wordsworth will be treasured after *Paradise Lost* and *The Excursion* have been put aside.

Years ago, twenty-eight years ago, we came across, and were pleased with sonnets composed by the late Mr. Benjamin Franklin Butler; and have searched these up, with a view to determine whether any of them should form poetic illustrations to our work. Sober second thought confirms first impressions. Here are two:

WASHINGTON.

From early youth inured to manly arts,
To curb the steed, explore the pathless wood,
And court the dangers of the field and flood;
In shape, mien, manners, prowess, solid parts,
A man complete, with choicest gifts endowed
To guide the battle and to rule the State,
To bless his country and to stamp him great,
The world extolled and kings in homage bowed.

Retired from public cares, serenely wise,
 No morbid hankering for departed sway
 E'er dimmed the lustre of his closing day ;
 But ripe in virtue, ready for the skies,
 He lived—he died, oh, who his worth can trace,
 Pride of our land and glory of our race !

WRITTEN AFTER READING THE TRANSLATION FROM THE GREEK AN-
 THOLOGY OF MELEAGER'S EPITAPH ON HIS DAUGHTER.

And was this all, fond sire, thy faith could say,
 O'er the sweet flowret torn from thy embrace,
 "Yield, mother mild, a soft and kindly place
 And gently lie upon her mouldering clay ?"
 Cold, joyless creed ! oh, how beyond compare,
 Our heaven-taught hope excels thy utmost art
 To fill, with balmy peace, the broken heart
 And cheer the soul, by calm, confiding prayer :
 "The precious dust we give, in tears, to thee,
 Earth, safely keep," the Christian parent cries,
 "Till the glad hour when all the dead shall rise ;
 And, Father, grant that then my lot may be
 To join my loved one in her native skies
 And there forever dwell with her and Thee."

We should have given further proofs of Mr. Butler's powers in poetry and added general reminiscences of him, did we not know that a worthy son contemplates all this. He will truthfully, affectionately and proudly tell how the father honorably and ably filled high offices; acted the great part of an honest lawyer; and carried out home and general duties of life peacefully, religiously, kindly, affectionately.

The lauret-leaf which Mr. Butler held and played with prettily, has still a living influence in the hand of this lawyer-son, Mr. William Allen Butler. The latter, with modesty attendant upon talent, anonymously presented a hybrid weekly paper, published by the Harpers, with a poem, entitled, "Nothing to Wear."

With easy versification—reminding one of a well-shaven lawn—and well chosen words, it illustrates the extravagance and heartlessness of city maidens. There has been nothing equal to its rhythm and rhyme, with us here, in our mammon world, since Hal-

leck's transparent verses. To old readers, the swing of the lines will remind of Anstey's "New Bath Guide"—a work scarce readable now—while Mr. Wm. Allen Butler's production has the purity of present issues, and it has excellent contrasts. The first part exhibits all the show, glitter and colors which attach to the extravagance of heartless, fashionable folly, while the after portion has a soberness, gentle pathos and feeling of charity, strongly in proof of the author's better nature. We shall be pardoned for giving it here:

"Oh! ladies, dear ladies, the next sunny day
Please trundle your hoops just out of Broadway;
From its whirl and its bustle, its fashion and pride,
And the temples of trade which tower on each side,
To the alleys and lanes, where misfortune and guilt
Their children have gathered, their city have built;
Where hunger and vice, like twin beasts of prey,
Have hunted their victims to gloom and despair;
Raise the rich, dainty dress and the fine brodered skirt,
Pick your delicate way through the dampness and dirt;
Grove through the dark dens, climb the rickety stair
To the garret, where wretches, the young and the old,
Half-starved and half-naked, lie crouched from the cold,
See those skeleton limbs, those frost-bitten feet,
All bleeding and bruised by the stones of the street;
Hear the sharp cry of childhood, the deep groans that swell
From the poor dying creature who writhes on the floor;
Hear the curses that sound like the echoes of hell,
As you sicken and shudder and fly from the door;
Then home to your wardrobes and say, if you dare,
Spoiled children of Fashion, you've nothing to wear!

"And, oh, if perchance there should be a sphere,
Where all is made right which so puzzles us here,
Where the glare and the glitter and tinsel of time
Fade and die in the light of that region sublime,
Where the soul, disenchanted of flesh and of sense,
Unscreened by its trappings and shows and pretence,

Must be clothed for the life and the service above,
 With purity, truth, faith, meekness and love ;
 Oh, daughters of earth ! foolish virgins, beware !
 Lest, in that upper realm, you have nothing to wear."

Oliver Goldsmith has struck like key-notes in his "Deserted Village."

Mr. Jonathan Lawrence, junior, who died in April, 1833, was a promising lawyer among the young members of the New York Bar. His literary efforts were shown in an exquisite sensibility to the beauties of poetry and he had many friends of his youth who pressed into his dying chamber and received, through a calm endurance of suffering, a manly farewell.

He could translate Beranger with spirit and, as a proof what pretty love poetry came from him, take the following:

"I will love thee no more—I have loved thee too long,
 Thou hast wasted a heart that was thine to its core.
 The ties I have striven to break were too strong,
 They are broken at last—I will love thee no more.

"Yet, I pause for a moment—yes, ere I erase
 That picture, whose colors are laid in my heart,
 Let me call back its beauties of soul, form and face,
 And then, fix the stern purpose that tears us apart.

"Ah ! they need not the summons, already they seem
 To start from the canvas—that form and that brow
 The same I have worshipped in many a dream ;
 The same I must blot from my memory now.

"That dark hazel eye, in whose sweet circle dwells
 A witchery far beyond poetry's dream,
 Which, though keen as the eagle's, yet like the gazelle's,
 Loves to melt into softness its brightness of beam.

"Those lips, whence sweet words come more liquidly sweet,
 And so slowly they seem as if wishing to smother
 In that prison of rubies whose ripe portals meet,
 As if pouting and reddening to part from each other.

"That brow like a book, on whose white page is seen
Pure thoughts and affections, high purpose and soul;
No dark lines, where passions unholy have been,
No waste where the lava hath but ceased to roll.

"A mind full of fancies, as gentle as bright,
Whence, not bitter with sarcasm, but dazzling with wit,
Even satire's sharp arrow, when quivering for flight,
I feel sure cannot wound, though 'tis certain to hit.

"A heart whose full chords are so tremblingly true
To each finer emotion, that did I but try
To grieve thee in jest, it would change thy cheek's hue,
Send a sigh to thy lip, and a tear to thine eye.

"And a form in whose fullness and beauty of mould
The eye of the sculptor would brighten to see—
The charms which were gathered from hundreds of old—
All blended in one and all breathing in thee.

"The picture is finish'd—one kiss on that brow,
One glance from those eyes could I aught but adore—
One smile, one sweet word, one soft pressure, and now!
The picture is broken!—I love thee no more.

"Thou hast spurned my affection—'twas all I could give;
Thou hast blasted hope's tree—the sweet blossoms it bore
Are strewn at thy feet—thou couldst yet bid it live,
But I scatter their promise—I love thee no more.

"I will worship no longer—my heart I redeem,
The years thou hast wasted thou canst not restore,
The past I gave *thee*, thou hast left it a dream,
But the future is *mine*—I will love thee no more."

While Mr. Daniel S. Dickinson was in the New York Senate, a gentleman called, one evening, to see him, holding in his hand a bunch of fresh flowers; and said:

"Mr. Dickinson, I wish I could get some friend to write me lines on these flowers."

Whereupon Mr. Dickinson said, "I will try to do it myself."

He then sat down and made the following:

“ Emblem of life and loveliness !
Welcome, sweet harbinger of Spring ;
Clad in thy beauteous summer dress,
And wafted on Time's fairy wing.
Would thou wert fadeless as the sky,
All redolent of hope and gladness,
But soon, alas ! thou'lt lonely lie,
Emblem of death, of grief, of sadness.
Emblem of life ! thing of an hour,
How soon thou'lt hang thy sickly head,
And bow beneath the conqueror's power,
And lie among the sleeping dead.
Emblem of life ! beyond the tomb
Thy flowers again shall form a wreath,
Shall germinate amid the gloom,
And triumph o'er the monster Death.”

On the death of Chancellor Kent, the following lines by a lawyer appeared in the New York Evening Post; and his son, Mr. William Kent, with deep feeling and heartfelt pressure of hand, expressed his acknowledgment to the author:

“ Life in the street and sunshine in the sky;
Death in the room and silence in the court;
While the good soul receives the wings to fly,
Takes the white robe and gains the happy port.

“ Before a Kent the hydra fraud withdrew ;
The rattlesnake black-libel lost its power ;
Around a Kent the little children flew ;
The orphan smiled ; the widow found her dower.

“ The lovely joy that makes the daffodil
Dance to the wind was his through day and night ;
And yet he stood as lily on a hill,
With fragrant bells all beautiful and bright

“ Like a young bird was he 'mid leaflets green ;
While bird-like life had he in years of rest.
And like the lark that soars and sings unseen,
He lets his notes still linger round the nest.

“Friend of my heart! now mourning o’er the dead—
 The Jonathan of one of spotless name,—
 Forego thy tears and proudly raise your head:
 He was thy sire! who hath a brighter fame?”

Although special pleading has fallen into disuse in the State of New York, the time was when the science of it was styled the perfection of reason; and at that period the record, in detached pieces, which follows, appeared in a newspaper. The London Spectator newspaper upholds the turning legal matter into verse: “Coke was versified and Lord Campbell says usefully. Why, then, should not a lawsuit be traced into rhyming narrative?” There is ground to suppose the whole was the production of the late William Curtis Noyes.*

*This case is in the Supreme Court,
 Where Justice holds her fair resort.*

PLACITA. } The Court in which these pleas are holden,
 } Sits always as it used of old, in
 The City Hall in New York City,
 Wherein’s much noise, the more’s the pity,
 Before the Justices of the people,
 Of whom the emblem’s on the steeple,
 At the term held in the month of May,
 In eighteen hundred twenty-nine,
 When lawyers make a rich display
 And with their briefs and speeches shine.
 As witnesseth Chief-Justice Savage,
 Who every book of law doth ravage.
 For clerks we’ve had such good one’s rarely,
 There’s Hubbard, Oliver, Paige and Fairlie.

*County of Albany, double S,
 Let Justice all our wrongs redress.*

PLAINTIFF’S } Peter Hill puts in his place
 WARRANT. } The pettifogging Peter Pascal;
 In a plea of trespass on the case,
 ’Gainst Jacob Horton, a vile rascal.

* We guess this, because the article was sent to the Boston American Jurist, with a letter bearing the initials “W. C. N.” and the addition, New York. (27 American Jurist, 247.)

*County of Albany, double S,
Let Justice all our wrongs redress.*

DEFENDANT'S } Horton, defendant in this case,
WARRANT. } Puts into his proper place,
As his attorney, at the suit
Of Peter Hill, the learned John Brute.

*County of Albany, double S,
Let Justice all our wrongs redress.*

MEMORANDUM. } Be it remembered, while time shall last,
} That in the term of February past,
Which in the city of Albany sat
Before the aforesaid justices there,
Came Peter Hill and doffed his hat,
By his attorney smooth and fair,
And then and there his bill did show
'Gainst Jacob Horton, who can't go:
For he is held in custody,
To answer to the plaintiff's plea:
And he doth here for pledges show
Messieurs John Doe and Richard Roe.
The bill appears without delay
And in these words, that is to say:

*County of Albany, double S,
Let Justice all our wrongs redress.*

NARR. } Hill, the plaintiff in this suit,
} Complains of Horton, oh, the brute,
Who now is held in custody;
And, trespass is the plaintiff's plea.
For that whereas the said defendant,
O'er who the scourge of law is pendent,
Did on the 30th day of May
A certain instrument convey
(In other words a note in writing
Of said defendant's own inditing),
By which he promised to deliver
Twelve bantam hens, oh, the deceiver!
Also a young and likely horse
Fit for the carriage or the course;
And the said Horton, brute aforesaid,
Alas! has neither hens nor horse paid;

And now the plaintiff, sad and sighing,
Comes, loudly upon Justice crying,
Unto his country's jury squalling,
And for his hens and pony bawling;
But the aforesaid vile defendant,
Won't give them up—and there's the end on't.

IMPARLANCE. } And now at this same term of May,
 } Until which time was given day
 } For the said Horton to appear
 } And have the court and Hill his answer hear;
 } And, thereupon, he comes with trembling steps and fear.

DEMURRER. } Jacob Horton comes in court
 } And doth defend the aforesaid tort,
 } When and where the court shall say;
 } And says that he ought not to pay
 } Said Hill one farthing; for said narr
 } And all the matters contained thar
 } Will not in law sufficient be
 } To hold said Horton in custody:

For they're not stated legally;
Nor is said Horton bound in law
To answer facts now stated,
(All this said Bute internally saw,
For know he is not addle-pated).
And the said Horton's ready here
To verify and make it clear
That the narr of the aforesaid Peter
Is bad in *substance* and in feature;
Wherefore said Horton now doth pray
That he may thereof go *sans* day.

CAUSES OF } And the said Horton, to be thorough,
DEMURRER. } Sets down these causes of demurrer,
 } As by the statute he's commanded
 } And to be honest, just and candid.
 } *First.* In every narr, in every case,
 } You must allege a *year* and *place*.
 } But Hill's said narr containeth neither,
 } And, therefore, is not worth a feather.
 } *Again:* that you prevent confusion
 } Your narr must have a good conclusion;

And if 'tis damages you claim,
 The wished amount you there must name;
 The narr aforesaid hath this flaw
 And, therefore, it is bad in law.
~~Besides, the aforesaid narr's deficient,~~
 Informal, vague and insufficient.

JOINDER IN { And now said Hill doth come again
 DEMURRER. { And answers in a louder strain;
 And saith that his aforesaid narr
 And all the griefs exhausted there
 Are ample in a court of law
 And free from even the slightest flaw;
 And that his foe, the unjust Horton,
 Whose hands the fangs of law are caught on,
 Not having yet denied the story
 (And thereby tarnished all his glory)
 Must meet the fate his deeds entail him
 And of his grievous wrongs bewail him.
 And this said Hill will prove where'er
 The court directs him to appear.
 And so again he prays his action
 Of law upon the vile transaction
 And all the damage long sustained—
 Whereof he hath above complained.

CONTINUANCE. { And now, because this court of law,
 { From rash conclusions shrinks with awe,
 And conscious of their mighty station,
 Desire mature deliberation.
 And being yet not well advised
 What judgment ought to be devised,
 A day is to the parties given
 (To seek each other's peace and heaven
 Then hear the judgment and their doom)
 Until the August term shall come.

APPEARANCE { At which said term the judges meet,
 AND { And one another kindly greet.
 JUDGMENT. { And Utica's the favored place,
 Where Justice shows her solemn face;
 And Hill and Horton too appear,
 Both trembling now and pale with fear.

And caution due having well been taken,
 To show their honors not mistaken,
 It is considered, that said narr
 And all its matters, near and far,
 Are both in terms and rhymes too rough;
 And in the law not strong enough,
 For Hill one moment to maintain
 The cause for which he doth complain;
 And that said Horton be set free
 From any further custody;
 And without day be thence enlarged
 And from his *durance vile* discharged.

And the said court do furthermore
 Adjudge, upon the grievous score
 Of costs by Horton fully paid
 In the defence which he has made,
 That he therein shall be requited
 (At which his heart must be delighted)
 And, for the same, award one cent
 (Which has his free and full assent)
 And do award him execution
 Of this most ample retribution.

And let said Peter Hill
 Of mercy have his fill
 From henceforth
 And so forth.

I judgment here do promptly sign
 Oct. 10th eighteen hundred twenty-nine.
 And this is my peculiar work.
Per Curiam. FAIRLIE, Clerk.

The following was made out as the report of the examiners of applicants for admission to practice, appointed by the General Term of the Supreme Court held in Alleghany County in the autumn of 1855. The "benefit of clergy" mentioned in it was defined by some of the class to be, the right of Christian burial; by others, the privilege of being attended at the gallows by a priest:

In the matter of }
 Certain Young Men. } SUP. COURT, ALLEGHANY GEN. TERM.

The undersigned, to whom the Court
 Referred the student's class,
 To ascertain and then report
 Whether the same could pass;

Have been attended at their room
 This morn, from eight to ten,
 And diligently have "put through"
 Those interesting men,
 On various subjects of the law,
 Commercial, common, civil ;
 Of nature, nations and of God
 And some laws of the devil.
 We have examined them with care,
 And their acquirements seen
 (The questions on the last-named laws
 Were chiefly put by Greene),
 And find their knowledge just enough
 To warrant a report,
 That they be suffered to come in
 And practice in the court!
 Therefore, we've to conclusion come,
 May 't please the court, to urge ye,
 That all shall be admitted to
 "The benefit of clergy."
 In testimony of which fact
 (For want of room at bottom)
 Our hands and names here on the back
 Deliberately we've sot 'em.

The following legal ballad appeared in the New York Knicker-
 bocker Magazine for 1855, footed "City Hall, New York" and
 bearing the initials of W. P. P.:

THE CASE OF FOX AGAINST FRENCH.

Cujus pars fui.—Virgil.

There went twelve men into a box
 And one onto a bench ;
 To try an issue joined 'twixt Fox
 And the defendant French.
 The charge was this, when clarified
 From technical word-fog :
 That French's son tin-pan had tied
 To tail of Fox's dog ;

Who thereupon—the cur I mean—
In frenzy to aoint,
Had run his legs off slick and clean,
Up to the second joint.
Whereby said dog, to all intents
Of use, no matter what,
Was not worth, no, not worth three cents—
And bogus ones at that.
Then, sundry witnesses were heard
Defendant's side upon,
Who all, upon their oath, averred
He never had a son.
And said, they wished they might be stoned
Each from his son and wife,
If plaintiff ever yet had owned
A dog in all his life.
Then Fox his witnesses deploys
Before the legal camp,
Who swore said French had twenty boys
And each a precious scamp.
And then, in plaintiff's canine praise
They all did thus agree:
That Acteon, in his proudest days,
Hadn't half the pack that he.
Then rose defendant's counsel wise,
Alert for legal fight;
And plump in court's and jury's eyes
Threw dust from morn till night;
And tore, at times, his hapless hair,
As wrath inspired his strains;
Till scalp, without, of locks was bare
As skull, within, of brains.
Next day, rose plaintiff's "learned" trust,
Squire Rigmarole McThud,
And killed nine hours in throwing dust
Diversified with mud.
As he was bald, he could not doff
His thatch, yet "suffered some,"
For in his frenzy he tore off
Three fingers and a thumb.
Then rose the court with awful grace,
And to the four times three,

Said, "Gentlemen, you've heard the case
 From A to and *per se*.
 The law is clear, the facts you know,
 The doubts we'll not discuss;
 If you think thus and thus, why—so;
 If so and so, why—thus."
 The patient jury thereupon
 Were quod-locked for the night;
 And on the morrow found, *nem con.*,
 True verdict: "Served 'em right."
 And when, at last, they had achieved
 A task so deeply thrilling,
 Each for his four whole days received,
 All told, just one short shilling.

At a trial before a referee in Delaware County, Daniel S. Dickinson was counsel for the plaintiff and Mr. H——, of Binghampton, for the defendant. The latter, although a lawyer of eminence, was always slow in all his movements as an advocate. A witness, waiting to be examined, became impatient to give his evidence and be dismissed—and handed up the following to Dickinson:

"When Job was tempted by the devil
 His patience saved his soul from evil;
 But were he living in our day,
 And thrown by chance in H——'s way,
 If forced to hear him try a case,
 I fear poor Job would fall from grace:
 He never could endure, I trow,
 What we poor devils suffer now!"

Mr. Dickinson dashed off this rejoinder:

"There were no lawsuits in those days,
 As any one can plainly see;
 For had there been, the devil would
 Have made poor Job a referee,
 And sent for H—— to try the case,
 And spin it out till Job would cry:
 I give it up—my patience's gone,
 And I will just curse God and die!"

At a Circuit Court held in L., N. County, New York, Judge D—— presided. Evidence had just been closed in a case in which the defendant had introduced two witnesses, one named —— True, and the other —— Ditto, who corroborated each other and whose testimony made a strong case for the defendant; and the latter moved for a nonsuit. Counsel were arguing the motion, when the judge quietly took up his pencil, wrote upon a slip of paper and handed to the plaintiff's attorney the following:

“Since *True* swears ditto to *Ditto*,
And *Ditto* swears ditto to *True*:
If *True* be true and *Ditto* be ditto—
I'm afraid they're too much for you!”

In the City Court of Brooklyn, Judge Culver presiding, Mr. Anthony R. Dyett, of the New York Bar, was present: There was a case in which two German lawyers, Mr. Lux and Mr. Miller were opposed. Arguments were made on both sides, but it was clear that the former had the better of the latter, on which Mr. Dyett circulated the following:

“The court wants light, lo! *Lux* appears;
His argument's a perfect killer,
But pity sheds her gentle tears,
To find he's slain a harmless *Miller*.”

Mr. David S. Jones, brother of the late Judge Samuel Jones, had much practice in the old Court of Chancery of New York, at a time when long pleadings and longer arguments were allowed. And certainly Mr. Jones did credit to both, for he was particularly elaborate in bill and answer and brief and argument, while every word that came from him was measured as with a yard-wand. One day he was fully up to his reputation, when a brother counsellor, who wanted his own matter to come on, but felt that Mr. Jones was almost interminable, struck off and handed to an associate the following:

“When David Jones begins his tones,
He's like a nurse upon a rocker;
I would the bones of David Jones,
Were gone to Davy Jones's locker.”

The gentleman who scribbled the above was once waiting with other advocates in the United States District Court for the Southern District of New York, in the hope and expectation that Judge Betts would throw off decisions in many important prize cases involving large amounts; and putting pen to paper, wrote and handed the following to a brother counsellor:

LAWYERS IN THE PRIZE COURT.

What lottery lovers, these lawyers so wise!
How eager they are after "*prize* or no *prize*."
What gamblers these lawyers! how much one regrets
To see that their minds are all centred on BETTS.

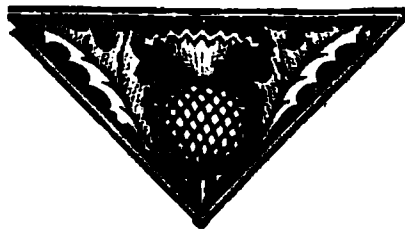
The same nonsense-maker was guilty of this:

ON SENDING A FRIEND A POCKET-KNIFE IN THE SHAPE OF A LEG.

You can put your leg in a hole;
You may press its stump in a socket;
And now you can tell an incredulous soul:
You carry a leg in your pocket.

At the time that Mr. George Wilson was in full practice and full feather with his peculiarities, one of which was great length of plausible speech, there was also another member of the Bar who, some would insist, was always tiresome and prosy. A member of the New York Bar was guilty of the following epigram:

"George Wilson's long nonsense is not to be borne;
I leave him to Fury, to Passion and Scorn.
For, he who can thus make each Barrister wait,
Should be marched out of court and be followed by Haight."



CHAPTER XII.

PRACTICAL AND OTHER JOKES, WITH MISCELLANEOUS
PLEASANTRY.

ALTHOUGH there cannot be admiration for

“—adepts in practicable joking,
Which is as much true wit as smoke is fire
Or puffing empty pipes tobacco-smoking,”

yet, it is certain that the world at large laugh and generally enjoy the poking fun at others. And it is also true that lawyers, with all their seeming soberness, are, as to jokes, but children of a larger growth.

Josiah Ogden Hoffman was full of waggerly. He belonged to the New York Bar at a time when lawyers were in the habit of going to Albany in wagons, carriages and sleighs. It was a journey of some three days. John T. Boyd and Hoffman and others had to go there to attend court. Boyd, in some casual conversation, had mentioned his exceeding dislike to ham and eggs. Hoffman was to start before him and Boyd had requested some one of Hoffman's party to order a comfortable bed and meals for him on the road. Whenever Hoffman stopped, he managed to order ham and eggs for a friend, a Mr. Boyd, who was to follow him, so that, at breakfast, dinner and supper—all the way to Albany—Boyd got nothing but ham and eggs. When he had reached the capital, Hoffman and his companions were on the steps of Congress Hall hotel. He greeted Boyd, and asked him how he got along?

The latter, growlingly, began by referring to his antipathy, from childhood, to ham and eggs—“And would you believe it, Hoffman!—a most remarkable fact—three days have I been travelling and at

every breakfast, there was nothing but ham and eggs; at dinner, naught save ham and eggs; and even at supper, nothing but those d—d ham and eggs!"

Judge Story and Mr. Josiah Ogden Hoffman were going together to Washington. The former had a habit, when travelling, of recurring to persons he had known in the places he passed through and was ready to end by descanting on their good qualities. At the first important place they reached, the judge spoke of a particular gentleman he had known there; but was met by Hoffman saying, the man was dead.

"Dear me!" observed Judge Story, "I'd no idea of it; he was a very good scholar."

They would come to another town, when the judge would say, he well remembered Mr. So-and-so who lived there.

"You mean, did live there," responded Mr. Hoffman; "he's dead."

"You surprise me! he was a very charitable man. The poor will miss him."

They came to a city and once more Judge Story spoke of some prominent person there with whom he had been charmed.

"Yes," said Hoffman; "and I knew him; he was a delightful person."

"'Was!' what do you mean by 'was?'"

"Didn't your honor know he was dead?"

"Good gracious, no! I'm very sorry to hear it. He was, as you say, a delightful man."

And so matters went on all the way to Washington, Hoffman killing off almost every man named by Judge Story—the latter, at the end of the journey, expressing himself as to the remarkable and to him unknown calamities which had fallen upon the families of so many men departed, whom he had known and esteemed, since he last travelled the road.

Our same Mr. Hoffman was in court at Goshen while Elisha Williams was summing up a case. The clarion voice of the latter might always be heard a mile off. Hoffman was very anxious to get his own cause on as early as possible. He observed Williams's

client with mouth open and attendant watchful eyes and ears; and going near enough to be heard by him, observed to another person:

"Williams is going to lose his cause, for there's a juryman who is hard of hearing and he's a fellow who always controls all the rest, and he don't hear Williams."

The client sneaked his way to Mr. Williams, pulled at his coat and whispered, "Speak louder, Mr. Williams."

"Go to your seat," responded the latter, in an angry undertone.

The client had hardly resumed his seat, before Hoffman took another opportunity to speak so that he could be heard by the man:

"What a pity it really is that Mr. Williams does not speak louder; if he does not, he'll lose his cause to a certainty."

Again did the client approach his counsel, pulled at his coat and urgently begged him to speak louder. Once more was he angrily told to go to his seat. And having done so, Hoffman made a third essay in the client's hearing:

"It's all up with Williams; that deaf juryman has decided on the verdict, for he is looking fixedly on the floor—he won't raise his head again unless he hears more than he has at present heard."

"Do you really think so, sir?" eagerly asked the client.

"Certain," replied Hoffman.

Whereupon, the man excitedly started up and loudly thus called on the bench: "If it please the court, will your honor compel Mr. Williams to speak much louder; for that juryman there has got an infirmity and can't hear him."

Hoffman, as his habit of practical joking was known to Williams, thought it as well to leave the court-room for a little while.

Josiah Ogden Hoffman caused it to be given out in the City of New York that Mr. George Griffin, at a certain hour and day, would go up, from a certain place, in a balloon. Perhaps of all people in the world Mr. Griffin's wide-spread, gigantic figure was the last to be made to double up ("double up your perambulators") within the basket-work of a frail balloon-car. Now this, not only caused people to congregate about what was then known as Vaux-

hall, but, after some time had elapsed, they were cajoled into the idea that the balloon had really started at an earlier hour. So it is fair to suppose that there were similar surmises to those which appear in the Ingoldsby Legends in connection with the going-up of the "Monstre" Balloon:

"Oh! the balloon, the great balloon!"
 It left Vauxhall one Monday at noon,
 And every one said we should hear of it soon .
 With news from Aleppo or Scanderoon.
 But very soon after, folks changed their tune;
 The netting had burst—the silk—the shalloon;
 It had met with a trade-wind—a deuced monsoon—
 It was blown out to sea—it was blown to the moon—
 They ought to have put off their journey till June;
 Sure none but a donkey, a goose or baboon,
 Would go up, in November, in any balloon!"

A worthy Recorder of New York was very fond of using certain peculiar expressions. One of these was, that such and such a thing *was becoming altogether too common in this community*; and another, that a prisoner found guilty before him *must suffer some*.

These came out on most occasions. "Young man," would he say in passing sentence, "I am sorry to see you here. I think I have observed you in this court before. The fact is, stealing is a vice which is *becoming altogether too common in this community*. You *must suffer some*. I shall send you up for six months."

It is insisted, by some nearly allied, by blood, to the late estimable Recorder, that the incident we are about to give was pretty well made out of whole cloth; especially that it could not have taken place on Blackwell's Island, for it had been purchased by the gentleman embraced by our incident for the city* and remained until years after the alleged circumstance could have possibly occurred without public buildings—having upon it, in fact, until a late day, only the Blackwell family mansion. However, the story is a good one and we give it as we find it.

* Purchased for the city at the sum of \$27,000. What is its worth now!

The Recorder was at Blackwell's Island, where those criminals who had been convicted by him were sent. He was there on one of those junketting excursions in which the City Fathers often indulged. They used to stay all night. The Recorder needed the service of a barber, but there was no knight of the razor save a convict, who did the shaving to his fellow-prisoners. To him the Recorder was obliged to submit himself. It was now a barber's chair instead of the bench of justice and a napkin upon the shoulders instead of ermine.

"My friend," said Mr. Recorder, in the blandest manner, "what unfortunate circumstance has brought you here?"

The barber scowled and, with a profane preface, replied:

"No unfortunate circumstance at all; you sent me! A man stands no chance in your hands: but you are in mine now;" and as he said this, with a quick movement, he clutched and pushed the Recorder's head back, dipped his razor into a cup of boiling water and drew the hot back of it, with all celerity, across the bare throat of the Recorder.

"Murder! murder!" roared the judge, as he sprang from the chair, gathering up the towel which was about his neck to stop the blood and sinking down again in the full conviction he was a dead man. The prison officers rushed in. "Don't you see the blood?" faintly asked the Recorder. The officers removed the towel and assured him there was none. He slowly drew his hand tenderly across his throat to be certain himself; and then, addressing the barber-convict, solemnly said:

"Young man, you took me by surprise. Jests may be good, but such as these should not *become too common in this community*, and I have no doubt it was right to send you here and that you ought to *suffer some*."

While Marcus T. Reynolds, of Albany, was arguing a case before a General Term at Rochester, there was a child of the janitor of the court-building, a little three-year-old, crawling about the floor and near to where Reynolds stood, who was resting his hand upon a chair. Watching a favorable opportunity, Reynolds tilted and suddenly let this chair down again so as to fasten the loose

dress of the child to the floor. The young one in vain essayed to crawl away. It was tethered firmly; and, after tugging and tugging and finding itself fastened down, it set up a terrible squalling. Reynolds paid no attention. The louder the child cried, the noisier was his voice in argument. This tended to terrify the little one still more. It screamed more violently; and the contest seemed to be as to which could make the most noise, Reynolds or the frantic youngster. All this time not a muscle of Reynolds's face moved. He seemed as unconscious as though all the groundswell of the outer world was shut off. The court and spectators, however, had soon conceived the cause of the shrill treble which, with the bass of the lawyer, made an extraordinary duet. Finally, and as though something for the first time had attracted his attention, Reynolds looked down; cast his eyes, with a cold look of seeming surprise, upon the child; and, lifting the chair slowly, gave the little captive its liberty. The latter scuttled across the floor like a small scared mud-turtle and was instantly lost to sight in a dark doorway. Reynolds continued his argument in the same stolid manner—amid the ill-suppressed laughter of all around.

Mr. Reynolds and Mr. Collyer were opposing counsel in an old case which had to be argued on points of law before Judge Nelson. The cause was called; and Mr. Collyer, who had the opening, declared he was not prepared, while Reynolds, with his cold gravity, claimed that he himself, at any rate, was so and appeared to press the matter on. Collyer said he had, a very long time ago, made some points, but not an extended brief; and had not looked at them for more than a year. As he stood up and had his papers on the table below his point of sight, Reynolds adroitly drew the
of them and pushed in his own. And still pressing the
id, "At any rate some progress might as well be made
lyer with those points which he had already prepared."
a judge coincided; so, Collyer took his bundle, opened
y were Reynolds's points and began by stating briefly
ter of the case and, with emphasis, read "my first
en, paused and pondered, with his head aside: "Well,"
that point does not strike me to be exactly like what I

drafted, nor, I must confess, does it seem to bear much on my side of the case; however I will, if the court please, go to my second point." And by the time he had done so, his mind began to flounder at such hostile matter—he paused—looked at the paper generally—the Bar began to titter and the judge had either seen or guessed at the trick which Reynolds had played and Mr. Collyer seemed to be getting conscious of what had taken place. Judge Nelson had, in fact, to join in a general laugh, while he called out "Adjourn the court."

It was currently said that Mr. Reynolds would often go into the highest appellate court—the Court for the Correction of Errors—and argue cases from his opponent's briefs and points.

Reynolds was toiling up State Street towards the court in Albany, with his shattered frame on crutches; when a poor man was coming down also maimed in the legs and on crutches—evidently having left the rail-cars, which, at that time, went no further than the top of State Street. Reynolds abruptly stopped and fronted the man.

"Why, my man, are you aware that this street is devoted to married ladies who are in a certain delicate condition and that persons maimed like yourself are not allowed here on account of the effect it might have on them?"

The man, with the greatest simplicity, stared his ignorance and expressed his regret.

"Now," said Reynolds, "there is a side street which will lead you direct to the ferry and that is the way it is expected that persons like yourself should go. However, as you have got so far, I will permit you to continue and here is half a dollar to help you on."

Mr. Reynolds, with features immovable, would do the most unaccountable things. While the Court of Appeals was sitting at Albany, he partly put his foot into an India-rubber overshoe and, giving his leg a violent jerk, forced the overshoe across the room when it hit a stout man plump in the stomach. It was difficult to say who slung it, for the very moment after Reynolds's foot was at work on the overshoe, his eyes were soberly fixed downward upon his brief.

Mr. Reynolds received some papers on which to oppose a motion at a Special Term in Albany and in them was a ten-dollar fee. His adversary stated his case, read affidavits and "moved." Reynolds said that his papers made out a clear case for a denial of the motion and it really was unnecessary for him to read them or to argue, but still, as something was expected of him, he would hand them up. This he did, with the ten dollars unremoved, thus showing he had not read or even opened them. The next morning the court announced its decision of the motion and, at the same time, handed back to Reynolds the fee, with a gentle reprimand. He, not at all disconcerted by the accident or reproof, with perfect *nonchalance* and a look of injured innocence, said to the court:

"I knew that your honor would have the principal labor in the matter and I thought it no more than right you should also have the fee."

Ex-Judge Samuel Jones, William Kent and Benjamin D. Silliman were associate counsel in a suit which was before a referee in New York, and the meetings were many. They would go and have a dinner together at a restaurant every day of the meetings. Judge Jones wore a most remarkably heavy and uncouth large pair of overshoes and did not remove them at the meal-time. These gentlemen would go to one of the small oblong dining-tables, the judge taking one side, Mr Silliman sitting opposite, while Mr. William Kent would occupy a seat at the end. The judge had a habit of generally plunging his feet about when eating and the consequence was that our much-valued friend, Silliman, got, at each meal, more kicks than dessert. He told Kent of this, declaring he would not sit opposite the judge any more and that Kent must do so and take a taste of the overshoes. This the latter tried to avoid, but Silliman managed one day, by a rapid movement, to secure the seat at the end of the table. Dinner commenced, but as Kent did not seem to wince, Silliman observed that, on this occasion, the judge was evidently somewhat passive with his feet whatever he might be with his teeth. So he, Silliman, silyly twisted his own foot and gave Kent a pretty sharp kick. At this the latter turned his face towards Silliman and gave a twinkle of his eye,

as much as to say, "He's giving it to me now." And every time he could, Silliman repeated his kicks, and, each time, he got a responsive twinkle from Kent's eye. After dinner and as they all three were walking up the street, Kent, putting his hand to his mouth, so as to guard his words from reaching the judge, said:

"Silliman, I caught it."

"Caught what?"

"The judge's kicks."

Silliman, with his hand towards his own mouth in the same manner, and now a twinkle of the eye from him :

"Kent, they were my kicks."

Judge Fine, of Ogdensburgh, St. Lawrence County, was out with other friends in the exciting presidential canvass of 1840. They fell in with one of those numerous political zealous bores, so common at election periods, who insisted on going the rounds of the judge's appointments with his party. Everywhere the fellow made himself noisily conspicuous, to the annoyance of the judge and friends and disgust of the more intelligent listeners and hangers-on. The party had stopped at De Kalb for refreshments; and when the wine was passing, the bore, who had seated himself next to the judge, demanded that each of the party should, in turn, tell a story or sing a song, beginning with Fine. The latter remarked that he never sang, but he would tell a story. Then addressing himself particularly to this bore, he proceeded:

"It was in old times, such as *Æsop* tells of, when all the animals as well as man had the gift of speech, that a fox in his rambles came to a deserted church, which he determined to explore in quest of game or information. In wandering over the building he came at length into the belfry, when, seeing the bell, his curiosity was greatly excited and he resolved to find out what it was, so he climbed up on the timbers till he could reach the bell and finding it would swing, he continued to move it till the clapper struck the side, when the noise caused him to start back in alarm. But finding himself unhurt, he approached it again and swung it till it rung repeatedly. At last, he withdrew in great disgust, and, shak-

ing his paw at it, exclaimed"—and here the judge rose, keeping his eye on the bore:

" ' You long-tongued, hollow-headed, noisy fool, you ! ' "

The judge left the room, and on inquiry it was understood the bore had business at home that night.

Politics ran high and there were newspapers that said bold things at the time when Governor De Witt Clinton and Burr and Sylvanus M—— were in active life. It is alleged that the latter was not neat in his attire. A newspaper called *The Corrector*, gave notice that on a certain day at twelve o'clock, noon, precisely and at a certain place, " Mr. Sylvanus M—— would be publicly washed and a clean shirt put upon him." De Witt Clinton was one who could not avoid, although in a joking way, being indiscreet and so wounding his friends. A little before the hour when the suggested washing should have taken place, Mr. Clinton met Mr. M—— in the street, took out his watch hastily and looking at it said, with a most serious and surprised countenance:

" Why, Sylvanus ! do you know it's just upon twelve o'clock ? you must hurry up or you will be too late."

" Too late," responded M——; " too late for what ?"

" To be washed."

" Oh, Governor ! you should not joke with your friends so."

Clinton, however, could not help laughing outright as he passed Mr. M——.

" I once," said Judge Edmonds to the author, " held a circuit court in the country where all the members of the Bar were strangers to me, and I to them. The judge who had been in the habit of holding court there was an easy, good-natured, slipshod sort of a man; and under his lax administration the lawyers had got into very careless habits. They came into court meanly clad and were not sparing of loud talk. This fretted me not a little, and I looked out for a chance of applying the corrective. The first case that came on for trial was a slander suit, brought by a poor man, a day-laborer, against a rich farmer in his neighborhood. The lawyer for the defendant was a strong and vigorous advocate and, as I afterwards learned, the leading man at that Bar.

But he was as rough in manner and as slovenly in appearance as the worst of them. In fact, he appeared in court in a long, unkempt beard, a soiled shirt and coarse summer clothes which had not seen the wash-tub for months.

"In summing up his cause to the jury, he attempted to excuse his client for the slanderous words imputed to him, by saying that the plaintiff had called him 'a ragged son of a (something).' And he continued, 'Now, gentlemen, my client is, to be sure, a rich man, but when working about his farm, he, in a spirit of economy, does wear old and patched and sometimes ragged clothes. To be sure, when he comes here, he is decently dressed, you see; but when about his business at home he is not particular about his appearance; and I submit to you, if his wearing poor clothes about his work is a just cause of reproach? You know I am not very particular about my own appearance, and I come here to my business not very much dandified or spruced up.'

"Here I interrupted him: 'But Mr. R——, your client has one advantage over you.'

" 'What's that, your honor?'

" 'He is decently dressed when he comes into court.'

"I had adjourned my court and taken my dinner and was sitting in my room during the recess, smoking a cigar, when I walked this same Mr. R——, freshly shaved, with a clean shirt on, boots brushed, and in a full suit of professional black, and exclaimed: 'There, confound it! Judge, will that do?'

"After this, I had no trouble on that circuit. Thenceforth all the lawyers were as gentlemanly in their appearance as they had always been in demeanor. And it affords me pleasure to reflect that one of them is now in the Senate of the United States (General Nye, of Nevada) and another has been for more than fifteen years a judge of our Supreme Court (Charles Mason of the Sixth District).*

* One of the Barons of the English Exchequer who was rather negligent in appearance was on a circuit. At that time the sound of trumpets gave notice of preparation for court. A sergeant at law had made the court

Mr. Levi Beardsley, whose ancestors were pioneers in Oneida County, and who rose to be president of the Senate of the State and a nominee for justice of the Supreme Court of the State of New York, has given a pleasant and interesting book of reminiscences. We introduce him as he introduces himself—when a growing lad, reminding us of Brian O'Linn, except that Brian's neat pair of breeches had a woolly side out.

“Brian O'Linn had no breeches to wear,
So he bought him a sheepskin to make him a pair;
With the woolly side out and the skinny side in—
'A nate pair of breeches!' said Brian O'Linn.”

“Almost every family in the country made their own cloth. The dye-tub was always an appendage and stood in the corner near the fire and served as a seat for one of the inmates. We came to the country before sheep-shearing, so we had to wait till they were sheared and the wool picked, carded, spun, wove and dressed, before we had our annual supply of woollen clothing; and for linen, we had to wait till we could raise flax and manufacture it. To obviate the difficulty, so far as I was concerned, my mother, after she came to the lake, cut up an old cloak, and from it made me a little coat with pockets. My grandfather professed a knowledge in the tanning business, and having provided himself with a large trough, in which he put such skins as he could get, he put them

wait one morning. On his taking his place, the Baron observed rather sharply:

“Brother, you are late, the court has waited considerably.”

Sergeant.—“I beg their pardon. I knew not that your lordship intended sitting so early. The instant I heard your trumpets, I dressed myself.”

Baron.—“You were a long while about it.”

Sergeant.—“I think, my lord” (looking at his watch), “not twenty minutes.”

Baron.—“Twenty minutes! I was ready in five after I left my bed.”

Sergeant.—“In that respect, my dog Shock distances your lordship hollow; he only shakes his coat and fancies himself sufficiently dressed for any company.”

through his process of tanning. I don't think he knew much about it, except in reference to deer-skins. He could dress them Indian fashion (smoke-dressed) as well as any Mohawk or Iroquois. He, however, got a sheepskin; and having taken off the wool, went on to dress it. I think the dressing was but little more than rubbing and pulling it, and then nailing it to the wagon-box to dry.

"After stretching it every way to its utmost tension, he declared it fit for use. And it was decided in council that, for want of something better, I should have a pair of sheepskin breeches, which were soon prepared, and I was cased in them. The skin was dry and rattled like parchment, or an old snuff-bladder, and the garment was so short in the legs that they extended but about half-way below my knees. You may judge of my appearance; the old sheepskin, when dry, would rattle when I ran; and if the pants got wet, they would stretch and become flabby, and then harder and shorter than ever when they got dry again."

Judge Samuel Beardsley was brother to the above Mr. Levi Beardsley. The judge, who had been Attorney-General and a judge of the Supreme Court of the State of New York, and whose memory will live in the eulogy of Justice Peckham (7 *E. Peskine Smith's Rep.*, 604), was never wanting in mental courage. When practising in Utica, the firemen there were very demoralized, and incendiary fires were frequent. It became necessary for leading citizens to discountenance the lawlessness which was rampant. Mr. Beardsley and other leading citizens inaugurated a meeting to devise some plan for the reorganization of the fire department, Mr. Beardsley drawing resolutions for the meeting. In a speech supporting them, he spoke of the sad experience under the old system and urged the necessity of a change and of finding out and punishing the bad men connected with it. He said this must be accomplished whatever it might cost." Justice shall be done though the heavens fall." Great exception to the speech was taken by the firemen; and a former leader of a fire company assumed the office of their champion and made an excited harangue, in which he spoke of their noble and self-sacrificing services, working in cold

and storm, while such men as Mr. Beardsley were lying quietly in their beds, and yet he would have them punished though the heavens fall. He rung changes upon this for some time, very much to the taste of the worst portion of the firemen who had pushed into the meeting to overawe it, and were there in sufficient force to empty the room of the order-loving citizens. While he was speaking there were decided indications that they might attempt it. They cheered him, and manifested intense indignation at Mr. Beardsley. As their champion sat down, he (Mr. B.) arose, took up the phrase of doing justice though the heavens fall, and commenced a fierce attack upon the last speaker as a demagogue seeking the influence of the bad men of the fire department on whom justice should be done though the heavens fell.

"I reiterate that phrase," said he; "I adopt it. Let justice be done, then, though the heavens fall." As he proceeded with a tremendous invective, the excitement became intense; but this champion of the firemen was cowed, and instead of a rising to break up the meeting, which a moment before seemed imminent, he apologized, said he did not mean to attack Mr. Beardsley; and the resolutions which the latter had proposed were carried without opposition.

The speech of Mr. Beardsley against the United States Bank during the administration of General Jackson will long be remembered, especially the part where he exclaimed "Perish credit, perish commerce, perish the State institutions" rather than be governed by a moneyed oligarchy.

A somewhat similar expression had been used in the English Parliament long before Judge Beardsley's time. George Harding, afterwards a Welsh judge, used this phrase: "Perish Commerce! let the Constitution live!" Windham was pointed at as its author; but though he justified the sentiment, its authorship was settled by Harding himself, who said:

"That the calumny which had been thrown out on the words 'Perish commerce! let the constitution live!' properly belonged to him. He conceived it an honor to be joined with the right honorable gentleman even in a calumny. He avowed that he had said, and would now repeat, if we are reduced to the alternative of

losing either our commerce or our constitution—'Perish commerce!' This was what he had said and from this it was that the spiders of detraction spun that web in which they hoped to ensnare the right honorable gentleman. He should think himself degraded if he suffered it to remain a moment unexplained." (Parliamentary History, xxxi., 1086.)

Judge Cooper, the father of the novelist, entered and became in process of time seized and possessed of tracts of land about Otsego Lake, parcels of which he leased at low rates. A man named Johnson desired to occupy a well-known farm bordering the lake. The judge proposed that a certain picked quantity of fresh fish, at stated times, should constitute its rent. Johnson, who had a seine, was willing, but stated a repugnance, which was shared by his family, towards eating fish from which the best had been selected.

"But, Judge," continued he, "I tell you what it is, if you will agree to take the fish just as they run, you may bring on your documents."

The judge assented, remarking that a seine would not catch the small fry. The lease was drawn and signed. Nothing further was heard from Johnson; and the judge hunted him up.

"I am after my fish," he shouted, as he saw Johnson busy at a log pier.

"Ah, yes, just help yourself, Judge; there they all are in the lake, and you know you agreed to take them *just as they run*."

The report was that Johnson kept the premises for some time rent free.

Judge Zepheniah Platt had two students, one of them the present U. S. Commissioner for the Eastern District of New York. The judge, who liked a hand at cards, was desirous to teach these young gentlemen the game of brag, although they really knew something about it, but showed seeming innocence of any such thing. So the judge, this was in his office, got the cards and said they should play for only a penny a time. Now, these two young amiables had combined together, and when one found he had a bad hand he would throw it down and manage to see the judge's cards and give hints to the other. The consequence was that although

they played for pennies, they got about five dollars out of his honor.

"I *zwow*," said the judge, getting up ; "boys, I *zwow*" (his common expression) "you are apt scholars." They afterwards told the judge how they had "done him."

Judge Strong was a county judge in Jefferson County; but his name belied him as to liquor, unless when he was also strong upon *that*. He was particularly polite when *bacchi plenus*. Mr. Bates was a political opponent.

"I say, Mr. Bates, you and I have said a great many hard things about one another, and I am getting old and feel as if I ought to make an apology for all I have said and have it settled up."

"Oh, never mind," answered Mr. Bates; "let it pass, and if you keep quiet hereafter, I'll be satisfied."

"No, no," said the judge, "I owe you an apology, for I've called you a rogue, a thief and a liar."

"Well, never mind."

"Yes, but I do mind. I say I have called you a thief, and a liar and a scoundrel—and—and—I'll be hanged if I don't think just so still."

The words which a facetious boy, in a central village of New York, applied to his own father, would have done for Strong : "He often saw him at an hotel taking a dissolving view of a lump of sugar in the bottom of a tumbler."

It is said of this gentleman that when quite a young man, the court assigned him as counsel for a prisoner and requested him to give the accused the best advice he could under the circumstances. He retired with his client to an adjacent room for consultation, but returned without him.

"Where is your client?" demanded the judge.

"He has left the place," replied Strong.

"Left the place! what do you mean, Mr. Strong?"

"Why, your honor directed me to give him the best advice I could under the circumstances. He told me he was guilty and so I opened the window and advised him to jump out and run. He took my advice, as it is expected a client should, and by this time he is more than two miles off."

We have heard a similar circumstance attributed to John A. Graham, Esq., Doctor of Laws, New York.

An application was made to Judge C., of the Superior Court of Buffalo, for a receiver of a judgment debtor's property in proceedings supplementary to execution.

"Who do you want for receiver?" asked the judge.

"McMaster," answered the attorney for the moving party.

"I don't know him," said the attorney for the party opposing.

"I would rather have Day, whom I know."

"Gentlemen," said the judge sharply, "have either of you got a coin?"

The opposing attorney looked knowingly as he handed the judge a "copper-head."

His honor hastily glanced at it and said: "Head, McMaster, tail, Day."

Up went the coin. As it came down the judge asked, "What's up?"

"Stop, stop!" exclaimed the attorney who had furnished the coin; "that cent has got a head on each side, so Day can't stand any show!"

"Serves you right," retorted the judge, "and I hope it will teach you for the future not to trifle with the court. McMaster's receiver."

Judge John Griffin of Alleghany County, when in the New York Senate, obtained the floor. He had prepared a written speech of great length upholding and in relation to the Genesee Valley Canal. He commenced reading it from loose sheets of paper. The drawer of his desk in front of him appeared to be full of his *MS.*, which he went on to read in a drawling, miserable manner, sheet after sheet, making mistakes in his reading, until Senators became tired. Some left the chambers, others read newspapers, and a few wrote letters, while other portions laughed. The judge kept reading with unmoved gravity. After finishing the large roll of loose sheets in his desk, he deliberately unlocked an adjoining desk and took out a roll larger than the first; and, then, with a smile and wink at some of his friends, continued his reading. One of the Senators playfully proposed to him that the

reading of the residue of the speech be dispensed with and that it be printed; while another suggested it be "read by its title" and adopted. He took all this in good part, but went on until the whole was reeled off. The next day, the Evening Journal came out with the great speech by the Honorable John Griffin. While the judge was reading his speech, Colonel Young, who disliked him and had already had several altercations with him, and, besides personal dislikes, abominated his canal projects, drew a caricature of a large, tall, awkward-looking man, reading an enormous manuscript and wrote under it something like the following: "John Griffin of Alleghany, reading his *interesting* speech in favor of his canal." This was found on the judge's desk the next morning. He, without even this aggression, had no very amiable feelings towards the composer of it. The judge immediately tried *his* hand at a caricature, and, having made one, caused it to be placed on the Colonel's desk with the following underwritten: "This is Sam Young, bank-stock speculator, the —st rascal in the State." (Beardsley's Reminiscences.)

The following, which also touches on Mr. Samuel Young, may as well have a place here, especially as lawyers are actors, although the principal figure was but a magistrate to a limited extent, namely, an alderman. B—— had been an alderman in Brooklyn and represented Kings County in the New York Legislature, but was never known to have addressed the House. The last day of a session arrived and when this was passed B—— would have to retire to private life. The custom of that time, on the last day of a session, was for the Governor to invite a large number of gentlemen, picked out of both branches of the Legislature, to dine with him. About this period of time all the important business had been finished or matured, so that, really, little more than the mere formality of passing bills had to be done. Silas Wright, Levi Beardsley, Nathaniel P. Tallmadge, Samuel A. Talcott and B—— with others were returning to the State House from the Governor's table, all in high feather.

"Beardsley," said Wright, "if you and I and the rest of us had held our tongue as our friend B—— has done, we might have been

deemed men of wisdom. Talcott has been telling about town that this, our alderman can't talk, and says he has all the appearance without the imputed wisdom of the owl. It must be mere satire; and I am determined to bring our friend out to-night on the floor. Alderman! you must speak in justice to yourself."

"Never could speak," was the response.

"But you must. How do you know whether you can orate or not unless you give yourself a trial?"

"Don't want to speak on any thing."

"Why, only say a word or two on any matter which comes up to-night. Let it be short and to the point in your own easy colloquial style."

Others here urged, and B——'s countenance began to indicate a desire to please his friends. At last, he thought it likely "he might make a few remarks. None of you, gentlemen, think it probable that, when I was a youngster, I was looked upon as a very good speaker. As we are all here walking and talking together, I tell you it's a fact. I addressed a Jackson meeting in '32. The proceedings were published in our paper and the substance of my speech was written out; but as there were a good many addresses from others, my speech, the editor said editorially, was crowded out."

The party had reached the hotel, Congress Hall, and to pass without first going in was, at this time, an impossibility. "Neither few nor short were the drinks they took." From thence they entered the Assembly. Samuel Young was Speaker and presiding. There was the hurly-burly of the last hours of the session and the sound of the Speaker's gavel alternated with the cry of "Mr. Speaker" and the voice of the clerk reading the bills which were in rapid transit towards acts. Of course, nothing like speeches were, at such a time, ever dreamed of. All was action, no debate. Members were rapidly moving about and looking after and bringing up local bills. B—— was in his seat, not exactly tipsy, but in a state between what is called "mops and brooms." His district had no interest in any bill about to be acted on, nor was there one in which he had the slightest interest. The hubbub

reached such a height that Speaker Young, who was rather deaf, wielded his gavel with such force as to wake and rattle up the mind of B—— and probably to the extent of making him have some dreamy recollection of a promise to speak.

“Mr. Speaker.”

Rap! rap! went the gavel. “The gentleman from Kings.”

“Mr. Speaker,” again said the alderman, but in a low monotone, as though he was talking to himself, “it gives me great pleasure to comply with the request of friends, sir, friends—”

“The gentleman will please to speak a little louder,” urged the Speaker.

—“Kind friends who have been with me in every struggle. When, sir, as I have already remarked” (he was going on in the same low under voice), “I was quite a young man, at the unanimous request of the committee, I addressed the people of my own county, at a mass meeting held to support that noble hero and pa—”

Rap! rap! “Really the gentleman must speak louder; I cannot hear a word,” petulantly shouted the Speaker.

The alderman did hear this and leaning with both hands on the desk before him, lifted his head and fixing his lack-lustre eyes in the direction of the Speaker stood there, gazing, without uttering a word.

“Will the gentleman proceed with his remarks?” cried the Speaker, impatiently. Rap!

B—— had grown leg-weary and not heeding or even hearing the request, quietly slouched back and settled in his seat.

Silas Wright, who sat near, rose, and, with well counterfeited indignation, said: “Mr. Speaker, I rise with a hope I may be pardoned for intruding at a time so ill-suited to debate, merely to express my surprise and I am sure the surprise of other members near me at the manner in which the member from Kings has been dealt with. If he were one of those who are incessantly before the House and compelling its attention, even then I indulge the hope that he should have received better treatment. But when I remember, as I am sure all do, that he is at once the most reticent, self-denying and eminently working member that has ever occupied

a seat on this floor, I apprehend that the astonishment which I feel and must express is not exceptional. I believe the whole House shares in it. I hope, Mr. Speaker, that my friend, whose eloquence may never again be heard within these halls, is to be encouraged to proceed in his remarks."

Mr. Beardsley of Otsego then arose and, with the greatest assumed gravity, said: "Mr. Speaker, I do, indeed, share in the feeling so well and emphatically expressed by my friend from St. Lawrence County and join him heartily in the hope that my other friend, from Kings, will be encouraged to resume his luminous speech. Mr. Speaker, it is seldom he addresses the House. He is an older member than I am; but, sir, within my recollection, this is the first time he has ever attempted to engage the attention of this House. Sir, it has been my good fortune, having my seat adjoining this gentlemen's, to have heard the few remarks he has been permitted to utter; and although they seem to have met with the condemnation of the chair, I take leave to say that all he has declaimed commends itself strongly to my judgment and appears most pertinent to the general question before us. It may be asked, what interest has he in a plank-road in Onondaga? I do not know. But I apprehend that the gentleman was, when stopped, about to open powerfully into that which appears to be the special object of the bill." (Here a heavy sleepy breathing somewhat akin to a snore came from the alderman and created a titter from those near to Beardsley.) "Gentlemen may laugh, but I hope the freedom of speech is not to be denied in this House."

A member at a distant part and who was not in the secret, said: "It was evident to all that there was no desire, on the part of the chair, to deny the gentleman from Kings to proceed. A great deal was made out of a small matter of parliamentary, so-called, etiquette. He hoped the gentleman would go on and soon finish, as there was a good deal to be done before adjournment."

The Speaker, who was evidently embarrassed at the turn things took, said, "he really could not understand what the gentleman from Kings had said; this was probably his own misfortune, as his hearing had become much impaired; he agreed with the gentleman

in the statement that the member from Kings had never before claimed the attention of the House, but as the time of adjournment was pressing and so much remained to do and as he could not see any possible connection between this proposed plank-road in Onondaga and the honorable member, he was, perhaps, too solicitous that the public time should not be, without great necessity, occupied on the last hours of the session. Will the gentleman from Kings please resume his remarks?"

All eyes were turned to where the gentleman from Kings was lying back in his chair. But no movement or sound now came from him.

"Why, gentlemen," said John G. Forbes of Syracuse, rising and speaking at the top of his powerful voice, "our friend from Kings is asleep and has been so, I am happy to say, for some time."

The House uproariously enjoyed the scene, but none more than Speaker Young, who quietly relished his triumph, as he supposed it, over Talcott, Wright, Beardsley and other immediate friends of the inglorious alderman.

A few days afterwards, there appeared in a newspaper an article introduced thus: "The following eloquent and touching valedictory remarks were made by the honorable Mr. B—— of Kings at the close of the session of the Legislature and we regret to be informed that he has retired to private life."

Rumor gave Henry A. Storrs and John A. Talcott credit for the remarks, but the alderman never disavowed them.

There is a man at Brooklyn named Henry Cowper, a carpenter. His passion is to make a raid on cats and deprive them of their tails, which he nails up against the wall of his shop—in this way he had secured about two score. He managed, thus, to seize and mutilate a tortoise-shell Tom belonging to Mrs. Langworthy. She made complaint to a magistrate and Cowper was brought before him. The justice mentioned the charge and remarked on the man's brutality.

Cowper.—"Why, your honor, I did cut a cat's tail off, but I did not know it was Mrs. Langworthy's. Still, I have got it nailed

upon the wall of my shop and if she will pick out her tail, she is welcome to it."

The justice again exclaimed against the man's brutality, who attempted to palliate his conduct by saying he had a passion for bob-tailed cats, while he thought the process improved their appearance, increased their agility and relieved them of an inconvenient and uncomely appendage.

His worship then added: "I shall impose on you a fine of ten dollars, with costs; and a repetition of the offence will subject you to a deserved and condign punishment. In the mean time, I shall require you to give bonds to keep the peace."

Cowper.—"Which piece, your honom? I have got more than twenty of them."

One might suppose this person to be a Manxman, for there is a race of tailless cats in the Isle of Man of which the inhabitants think much and they are sought after by strangers. A wag attempts to account for them, by suggesting that the Isle of Man is not large enough to swing long-tailed cats in.

What would Cowper of Olney have said to Cowper of Brooklyn? We can well imagine, when, as to the

"Poet's cat, sedate and grave,
As poet well could wish to have,"

we remember how the bard left his bed at midnight and trod the floor, to release poor puss from a closed-up linen chest.

Governor Daniel D. Tompkins, who at one time adorned the bench of the Supreme Court of the State of New York, had a remarkable memory as to persons and their relatives and connections. His engagements and friendships carried him all over the State and, so, he came across very many people. Yet he never afterwards seemed to pass any without most kindly addressing them by name and asking after brothers and children and connections, giving them all and every one a right Christian name. And his manner to each, as a brother lawyer who well knew him observed to the author, was both amiable and beautiful.

Daniel D. Tompkins was mainly the cause of slavery being ex-

punged from our statute-book; public education was extended by his exertions; he officially encouraged manufactures; and shattered his fortune and the latter years of his life in sustainment of the last war against the mother country.

While Jonas Platt was a Senator of New York there was this instance of his unshaken probity: In the winter session of 1810 there was a petition of Colonel John Trumbull for an act of the Legislature to allow his wife, who was an alien born and not naturalized and who resided with him in New York, to hold real estate. An application from such a source and for so harmless and so usual a privilege was nevertheless rejected. At that period the prejudice against English subjects was inveterate. A division was called upon the rejection of the bill in the Senate and Platt stood alone in favor of it, though, at the time, he was in nomination by the Federal party for the office of Governor. But he disregarded all the advantage which his vote would and did afford to his opponents at the impending election, because it came in competition with his sense of duty. Trumbull afterwards, in a portrait of Judge Platt, happily immortalized this illiberal proceeding on the part of the Senate, by giving the exact date of the vote and adding:

"Justum et tenacem propositi virum,
Non civium ardor prava jubentium,
* * * * *
Mente quatit solida."

[The man who is just and firm to his purpose will not be shaken from his fixed resolution by the misdirecting ardor of his fellow-citizens.]

Trumbull, who had fought in the battles of the Revolution; who had enjoyed the confidence and warm friendship of Washington and been called by him to a station in his military family, and who, subsequently to the war, had executed a high and delicate diplomatic trust abroad with such success as to save many millions to the country, was so much wounded and disgusted by this narrow-minded party conduct of the legislature that he never afterwards offered a ballot at an election.

A member of the New York Bar, long since dead, was exceedingly proud and exhibited it in a pompous and peacock-looking

manner. The lines of Churchill, which have been wrongly attributed to Rogers the poet from the fact of being written in his copy of Johnson's Table-Talk, would have applied to the subject of our present remarks:

"He is so proud that, should he meet
The twelve Apostles in the street,
He'd turn his nose up at them all,
And thrust our Saviour from the wall."

A most amiable, unassuming gentleman, high in the estimation of his brothers for scholarship, legal learning, domestic virtue and of a good family, called when a student on Sir Oracle, at the same time taking off his hat as he entered the office. Our extended brother met him with: "Put on your hat; put on your hat, young sir: I was but a poor boy once."

Perhaps the following also applies to our subject:

"Where is Mr. B——?" asked a friend of a gentleman in the executive chamber at the Capitol.

"He will be up in a few moments, I presume. He started to come up when I did, but I left him making a bow near the door."

Here is a little more of self-esteem:

Judge B——, one of the associate judges of D—— County was remarkably deliberate and ornate in his style of conversation; wore a white cravat with a huge tie, a very high shirt-collar and was altogether, in his own estimation, a great man. Among other offices, the judge held that of superintendent of one of the Sunday schools, and startled his auditory by the following touching appeal:

"My dear children, you will remember that in a short time you must all die and stand before a great Judge. Yes, a far greater Judge than even the one who now addresses you."

The first of the above grandiloquent gentlemen practised at the Chancery Bar in the time of the elder Emmet. He was ever diffuse and unpointed. His verbiage was like his figure:

"He talked in phrase as round as he was round about."

In an important case Mr. Emmet was opposed to him; and watched, with pen in hand, ready to take down any thing which it

might be necessary to answer. But, monotonous sentences came and came; blown out appearances, like linen puffed out on clothes-lines, showed and collapsed; hour after hour passed; nothing of moment appeared, and the whole was as the idle wind; and yet B—— sat down as though he had created a world clamped with logic. Emmet threw down his pen, as it is said Pitt did after watching Sheridan's sentences, and said to an associate, whistling each word as was his wont, through his pursed-up lips: "He openeth his mouth and out cometh darkness."

Mr. Ogden Hoffman, a good observer of the qualifications of a lawyer, remarked to a brother that he had often watched Mr. Emmet and always felt, when his argument was ended, that immense force yet remained: the engine had easily performed its work and there was power remaining for any further onward movement.

Mr. Emmet, when addressing court or jury, had a habit of getting his left arm behind him with a quill pen in his fingers and, although when viewing him in front he never appeared over-excited, yet this quill pen would be reduced to shreds upon the floor by the time he had ended.

The character of Thomas Addis Emmet looks exceedingly well in the following anecdote:

On one occasion in the Supreme Court of the United States, he and Mr. Pinckney were on opposite sides. It was a case which the latter had much at heart. In the course of the argument Mr. Pinckney travelled out of the cause to make observations personal and extremely offensive on Mr. Emmet, with a view, probably, of irritating him and weakening his reply. Mr. Emmet sat quiet and endured it all. It seemed to have sharpened his intellect, without having irritated his temper. When the argument was through, he said perhaps he ought to notice the remarks of the opposite counsel, but this was a species of warfare in which he had the good fortune to have little experience; and one in which he never dealt. He was willing that his learned opponent should have all the advantage he promised himself from the display of his talents in that way. When he came to this country he was a stranger; and was

happy to say that, from the Bar generally, and the court universally, he had experienced nothing but politeness and even kindness. He believed the court would do him the justice to say that he had done nothing in this cause to merit a different treatment. He had always been accustomed to admire and even reverence the learning and eloquence of Mr. Pinckney; and he was the last man from whom he should have expected personal observations of the sort the court had just witnessed. He had been in early life taught by the highest authority, not to return railing for railing. He would only say that he had been informed that the learned gentleman had filled the highest office his country could bestow at the Court of St. James, but he was very sure that he had not learned his breeding in that school.

The court and the Bar were delighted, for Mr. Pinckney was apt to be occasionally a little too overbearing. When we take into consideration the merit of resistance against the natural impulse of a warm Irish temperament, we must admire still more the manner adopted by Mr. Emmet. Mr. Pinckney, as we gather from Wheaton's Life of that gentleman, afterwards tendered the most ample and generous apology.

"The manner," said he, "in which Mr. Emmet has replied, reproaches me by its forbearance and urbanity; and could not fail to hasten the repentance which reflection alone would have produced, and which I am glad to have so public an occasion of avowing. I offer him a gratuitous and cheerful atonement; cheerful, because it puts me to rights with myself, and because it is tendered not to ignorance and presumption, but to the highest worth, intellect and morals, enhanced by such eloquence as few may hope to equal; to an interesting stranger, whom adversity has tried and affliction struck severely to the heart; to an exile whom any country might be proud to receive and every man of a generous temper would be ashamed to offend."

Mr. Thomas Addis Emmet was admitted to the degree of Counsellor-at-Law in the Supreme Court of the State of New York in February term, 1805. The coming of Mr. Emmet to the United States, followed as he was by Mr. Sampson and others, made the

resident members of the Bar and who had been to the manor born—especially those of the Albany Bar—fearful that they were to be overrun by Irish barristers; and the question was raised, whether Mr. Emmet was entitled to admission, from the fact of his being an alien. The court decided that alienism was no bar to admission.' (2 *Caines's Rep.*, 386.) But the feeling was so strong, that, at the August term following, the court made this general rule :

"Hereafter no person not being a natural born or naturalized citizen of the United States, shall be admitted as an attorney or counsellor of this court." (1 *Johnson's Reports*, 528.)

Although a present rule of the Supreme Court of New York makes citizenship a requisite for admission as attorney and as counsel, it has not been strictly enforced.

It was not long after Mr. Emmet established himself, when his profession afforded him an income of ten thousand dollars a year; and in the latter part of his life, his receipts amounted, in some years, to fifteen thousand dollars. These were large sums at the time for a lawyer to acquire by way of income from his profession.

On the 12th of November, 1827, Mr. Emmet was attending the trial of a cause as counsel in the United States Circuit Court in New York, when he was seized with an apoplectic fit. On being carried home, he expired in the course of the following night, being in the sixty-third year of his age. He had made no exertion in particular that day, but had taken notes of the testimony through the morning. On examination, these notes were found to be a full and accurate transcript of what occurred up to the very moment when the pen fell from his hand on his being seized with the fit. The scene in the court-room was, in the highest degree, impressive. Every individual present, the court, the bar, the audience, all were absorbed in the most anxious interest for the fate of this eminent man. The court was instantly adjourned. When his death was known, the expression of sorrow and respect was universal.

In *Notes and Queries* (London), the point is raised as to when the family of Emmet first settled in Ireland. It is not made certain, but as early as the year 1656 William Emmet filed a bill in the Chan-

cery of Ireland; and several suits were subsequently and down to 1698 instituted by and against Katherine Emmet, Thomas Emmet and Cornet Thomas Emmet. (4 vol., 2d Series, 233.)

The following story, in connection with Mr. Emmet, found its way into the newspapers:

"A journeyman saddler in New York who, by his industry and economy, had accumulated a few hundred dollars in money, resolved to establish himself in business in an adjacent village. After securing a situation for a shop, he returned to the city with about \$200 to purchase his stock. He put up at one of the public houses, and confiding in the integrity of the landlord, gave the money into his hands for safe-keeping till he should call for it. He then traversed the city in search of a favorable chance to purchase his stock and, after finding one that suited him, he returned to his quarters and called for his money.

"'Your money!' said the landlord; 'you put no money into my hands.'

"He had no evidence of the fact, and finding all his efforts to induce his host to give up the money were fruitless, the desponding and indignant saddler repaired to Mr. Emmet for counsel.

"After hearing a statement of the facts, and taking such measures as satisfied him that the saddler was a man of the strictest integrity, he rebuked him for putting his money into such hands without evidence; 'but,' said he, 'if you will do as I tell you, I will obtain your money for you.'

"The saddler very readily promised a strict obedience to his directions.

"'Well,' said Emmet, 'go back to the landlord and tell him, when no one is present, that you owe him an apology—that you have found your money, and was mistaken in supposing that you put it into his hands; you will then return to me.'

"The saddler did so, and the landlord expressed great satisfaction at the discovery of the mistake.

"Mr. Emmet then gave the saddler \$200 and told him to go and deposit it in the hands of the landlord, 'but before you enter the house, procure some gentleman of respectability to go in and call

for a glass of beer, and request him then to take his seat and carelessly pass away the time in reading the news, etc., till you arrive. You will then enter the room and in his presence tell the landlord you now wish him to take the \$200 for safe-keeping till you call for it.'

"This done, the saddler again returned to Mr. Emmet, who directed him to continue his lodging at the house for two days, and be regular at his meals; 'and then, when no other person is present, tell the landlord you will take your money.' This the saddler did, and the unsuspecting landlord without hesitation immediately refunded the money, which the saddler restored to Mr. Emmet, who directed him to take a good witness with him, and go and demand the \$200—" which you delivered in his hands for safe-keeping, in the presence of the gentleman who called for the beer.'

"The saddler accordingly proceeded to the house, in company with another person, and demanded his money.

"'Your money,' said the astonished landlord, 'I have just handed it to you.'

"'No, sir,' replied the saddler, 'I have not received my money; and if you refuse to deliver it to me, I shall take measures to obtain it.'

"The landlord dared him to 'do his best;' and Mr. Emmet immediately instituted a suit against him in favor of the saddler. The landlord, finding himself outwitted, paid over the money, with about \$20 costs."

Judge John Duer of the Superior Court of the City of New York wrote the epitaph which appears on the monument to Thomas Addis Emmet in St. Paul's Churchyard of that city.

Judge Duer was a man of moral courage; and what he felt to be right that he would do and say—maugre the notion of others. In 1851 there came to this country Louis Kossuth, who had enacted a conspicuous part in the struggle of Hungary for liberty. The fame of his patriotism, sacrifices, extraordinary zeal and eloquence had preceded and prepared the people of the United States to receive him with open arms and sympathizing hearts. When

he arrived and had been welcomed through the shouts of the multitude, he saw fit to suggest and argue that the principles of non-interference in the controversies of foreign nations, recommended by Washington in his farewell address to his countrymen, were erroneous; and he invited our Government to violate those principles in behalf of his own oppressed Hungary. By many of our most distinguished countrymen, public men and others, the stranger Kossuth was allowed to proceed in this course without opposition.

Being a distinguished member of the Bar in his own country, he was invited to a complimentary entertainment by the Bar of the City of New York. He accepted the invitation, and on the occasion of meeting our lawyers, he availed himself of the opportunity to advocate the opinions to which we have adverted.

A toast was given to "The Judiciary;" and Judge Duer was called on to respond. In doing so, but in a manner most respectful and deferential to the guest of the occasion, he maintained the American doctrine promulgated by the father of his country. This protest was received amid a storm of excitement. No matter, the protest had been made; it could not be withdrawn; it had been made by a man with a heart full of American feeling—a man who had served under Washington and Hamilton; it had been made by a member of an independent judiciary. When the Bar had time to grow cool and reflect, the action of Judge Duer was heartily approved by that body and the great community sympathized with him.

Mr. John Duer was one of the commissioners to revise the laws of the State and which now form our Revised Statutes. Mr. Benjamin F. Butler, who was an associate commissioner, declared at the Bar meeting called on Judge Duer's death, that the latter "was the head, the soul, the master-spirit of the commission." And Mr. Butler went on thus:

"His taste had been formed by a diligent study of the Roman classics and by the perusal of the best authors in our tongue, from Hooker and Bacon to his own time. He was passionately fond of poetry. In early life he sometimes courted the muses; and in his

more elaborate speeches at the Bar, in his occasional addresses which have appeared in print and in many of his judicial opinions, he often exhibited an inspiration and a harmony, the natural fruit of these tastes and studies. A man of true genius himself, he had a true and sympathetic appreciation of the genius and merits of others; and was singularly free from any traits of envy, jealousy and selfishness. Those who have heard him speak of the great men who, forty years ago, adorned this Bar, will at once recognize this feature of his character; and those who never enjoyed this pleasure, have but to read, on the monument of Thomas Addis Emmet, his glowing eulogy of that illustrious orator, expressed in the tongue of Cicero and breathing his very spirit, to convince them of the truth of my assertion."

The first impressions of a quick and naturally intelligent mind are generally correct; and there is no judge who has and uses them more promptly and openly than a certain present justice. He is a discriminating physiognomist; and, being so, has explicit confidence where he may—but when he has not, he is unreserved in negation. We feel sure he must be a fast friend and are as certain that if he were ever to be in the position of an enemy, it would be as an open one. He could never strike in the dark.

A lad handed up a mass of papers to his honor at chambers with a view to get an order of arrest. The judge, having examined, tossed the documents back with: "Not facts enough to arrest a rat."

The boy quietly took them out of court. Just as he was passing away the judge said aloud to one of the members of the Bar sitting some way from him and so that all who were present could and, probably, should hear:

"Counsellor, you should have read those affidavits; they would have made you die of laughter."

A member of the Bar was doing his best at chambers to get our judge to insert the name of the sheriff in an order of sale on foreclosure and not a referee, suggesting the smallness of the matter and the pecuniary necessities of his client and feeling how referees made up heavier totals than sheriffs. But the judge was inexora-

ble. He declared he had had a long tussle with the sheriff; had, at last, got him undermost; and he should not receive the benefit of any orders of sale from him.

"Counsellor," continued his honor, "when I was in California, I was walking in the street and observed two men down grappling; the undermost was a big fellow; the uppermost was a little chap, who was pounding the large man. I looked on for some time. Then I went up and told the little fellow he must let the big chap get up. But he held on; and turning his eyes on me, said:

"'Stranger, if you knew what trouble I had to get him down and undermost, you would not require me to do what you say.'"

A lawyer at chambers handed up an order for a reference. This same judge filled in a name as referee and gave the order back. The lawyer looked at it and made free to suggest to his honor that the person named was not satisfactory. Judge asked him why?

"Because, your honor, if I must say, the gentleman is too young. I want an experienced old lawyer."

"An old person, eh? then give me the order again."

The judge struck out the name; added another, and then said:

"There, counsellor, you want an elderly referee; now, I know the man whose name I have last inserted to be seventy-six years of age and he is the oldest lawyer I am acquainted with; but if you can name one of more mature age, I will strike out and insert him."

M—— was arguing a motion before our justice. It seems that the advocate's proclivities were known to the court as well as to some of the Bar.

"Now, Judge," said M——, "let me put a case: Suppose your honor were to place one thousand dollars in my hands."

Judge.—"Not a supposable case, Mr. M——."

How differently educated men feel is exemplified by some clinging to city life while others revel in the joy the country yields. Mr. William Townsend McCoun, on retiring from his judgeship, sought a country seat at Oyster Bay, Queens County, New York, where he gave his heart to leaves and flowers and waving corn. Judge Ogden Edwards tried country life on Staten Island, but found no delight in it. The former, writing to the author says:

"At the time the late Ogden Edwards was making an effort to live in retirement on Staten Island, he remarked to me that he found the apple-trees very dull companions."

This seems remarkable, for there was a liking for nature and poetical subjects in Judge Edwards. We well remember travelling with him to Buffalo, when his honor would draw out an old pocket-wallet and take from it scraps of poetry which he had cut out of newspapers; and this had been a habit.

Judge Nehemiah Earle, of Onondaga, and who was for years a Canal Commissioner, was very staid and very slow in his movements and always temperate in his habits. At a time when Washingtonian Societies, in favor of temperance, were rife, a committee called on the judge in his office with a view to getting him, on account of his well-known influence, to sign a petition in favor of their cause. The judge, as was his habit, had in his hand a paper-knife which he would be tapping upon his desk. He courteously and deliberately received and heard the gentlemen, and then said, as slowly as though measuring every word:

"Mr. —, I have no doubt your cause is a very good and laudable one; but ever since I was a boy so high," using his paper-knife as a measure, "I made it a principle of my life never to sign away any of my rights."

Pat. Hildreth, a round, rollicking, good-natured, easy-conscienced member of the New York Bar, was also a Master in Chancery. He was asked how he was in the habit of deciding?

"Oh!" said he, "I always decided in favor of the man who brought me the order of reference."

The following is from a New York newspaper. We tried to trace whether it was fiction or contained fact, but without success. There is, however, such seeming reality and interest about it, that we shall be pardoned for inserting "Mr. Selden's Revenge."

"Mr. Selden was a lawyer in the town of B—. He was an intelligent, upright, kind-hearted, pious man. But he had a neighbor who was very different. Jacob Mills, 'old Jake,' as he was called by the boys of the neighborhood, lived close by Mr. Selden, in an old tumble-down house in which he had been born and

brought up and which he would neither sell nor repair; so that, in time, it came to be the one blot on an otherwise pleasant and tidy-looking street. Old Jake was a miser; that is, he preferred to hoard up his money rather than to spend it in making himself or others comfortable. So he lived year after year in the dingy, chilly old house, with no one to take care of him but a woman whom he hired to come in twice a week to cook some food for him and mend his clothes; though, as to the latter, he was not very particular how they looked.

"The boys used to peep in at his windows and watch him counting over his gold and putting it carefully up in the old russet trunk; till one night he happened to catch them at it, and after that he always put up the shutters and bolted the door at nightfall. Finally, the woman who had taken care of him for a long time was obliged to go away from B—— to live. He had not paid her any thing for more than two years, always putting her off when she asked for her wages and promising to pay at the next quarter-day or else getting so angry that she dared not press the matter. But now that she was going away, she plucked up courage and told old Jake that she must have her money, stating the sum he owed her. Old Jake swore he did not owe her so much, and finally refused to give her any thing, unless she would stay another six months.

"The poor woman went to Mr. Selden and asked his help. Luckily, she had old Jake's written promise to pay her so much a month; for, knowing how miserly he was, she had exacted that when she began to work for him. So Mr. Selden took the paper over to the old man and told him if he did not pay the bill forthwith he would be sued. Jacob was in a great rage; but knowing very well that if he went to law the case would go against him and he should have more to pay, he at last reluctantly handed over the amount—small enough, indeed, but great in the eyes of the old money-loving man.

"After this Mr. Selden became the object of his special hatred. Old Jake blamed him for the loss of his precious dollars, and threatened vengeance against him and his. He was too much afraid of the law to do any open mischief, but he found many se-

cret ways of annoying and injuring his neighbor. If Mr. Selden's hens happened to fly over the fence into old Jake's yard, they never came back, though there was no garden for them to spoil. If Mrs. Selden had a particularly large washing on the lines, he would build a bonfire, so as to have the smoke and soot blow on the clothes. Mary Selden's pet kitten was thrown over the fence with its poor little paws cut off, and old Jake bought a vicious dog, though he could hardly bring himself to keep a creature that devoured so much food, who was taught to bark and snap at the children on their way to and from school. Luckily, after about six months 'tax-day' came round, and Jake, unwilling to pay two dollars even for the sake of tormenting the Seldens, gave the dog up to be killed.

"So it went on for several years. Finally, to crown all, Mr. Selden's cow died suddenly and was found to have been poisoned. Nothing could be proved as to who did it and so no redress could be had. By this time Mrs. Selden's patience was about run out. Many a time she begged her husband to go and threaten Jake with some sort of punishment if he did not stop such wicked treatment of those who had done nothing to deserve it. Mr. Selden, too, was much irritated, especially at the loss of his cow, which, besides being a valuable one, had been a great pet with all the family; and long-suffering as he had been, the lawyer felt that he could not bear old Jake's annoyances much longer without some remonstrance.

"While he was pondering what it was best to do, the miser suddenly fell sick of fever and now he was miserable indeed. The fever was severe and nurses were difficult to be had. Several were unwilling to go, because of the old man's miserly habits and bad temper, knowing that probably the pay they would get would be accompanied with his lasting hatred. So it happened that at the worst stage of his disease he was left entirely alone, as Mr. Selden happened to find on going home from his office one evening. He sat down to read his newspaper as usual, but he could not rest at the thought of his neighbor lying there alone and sick.

" 'Wife,' said he, 'I am going to have our doctor for Jacob

and to watch with him to-night. I wish you would give me a portion of that jelly we had for dinner and some wine.'

" 'I don't like to have you go,' said his wife; 'I am afraid Jake will kill you if he sees you in his house, he hates you so.'

" 'He is too sick for that,' replied Mr. Selden; and taking the comforts which his wife had prepared, he went over to the gloomy old house, sending his little son for the doctor.

" Pitiful indeed was the scene that met his gaze on entering the room where old Jake lay tossing on his bed, without fire, without light, uttering wild delirious cries and then sinking back, exhausted, into a kind of stupor. Mr. Selden tried to make the poor man a little more comfortable, lighted a fire, sent home for a shaded lamp and a book or two and prepared to pass the night in the sick room. The doctor anticipated a crisis of the disease during the night, but it did not come until the next day just at evening.

" A nurse had meanwhile been procured, Mr. Selden offering to guaranty him compensation for his services; but he himself remained with the sick man most of the time, as more than one person was required to hold Jacob in the fits of delirium. At length, after a fearful paroxysm, he sank into a troubled sleep, which gradually became more peaceful and continued for some hours. When he awoke he was conscious and saw some one sitting by the fire reading. He lay quietly awhile, trying to think where he was, and who could be sitting by his fire; for as Mr. Selden sat with his back to the bed, in a large, high-backed chair, nothing but the top of his head was visible.

" 'Who are you and what are you there for?' growled he faintly at length.

" Mr. Selden quietly turned round, saying, 'You have been very sick, and I came in to take care of you.'

" Old Jake tried to raise himself up in bed, but fell back helplessly, his face darkening with rage at his own weakness and at Mr. Selden's presence.

" 'Go away!' he cried; 'how dare you come here to insult me when I am sick?' And the old man tried again to rise, but again fell back.

" 'You must keep quiet, my friend,' said Mr. Selden, gently; 'I came here to help you and not to insult you, and as soon as you are better I will go away.'

"The old man snarled an inarticulate reply and turned his head away. After a little while Mr. Selden approached him again, and offered him some jelly. The old man's eyes brightened at it, and in spite of his hatred of the offerer, he could not resist the desire to taste it.

"Mr. Selden fed him with a little, and then old Jake asked him where it came from?

" 'My wife sent it to you,' was the answer.

" 'Take it away!' growled Jake; and again turning his face to the wall, he closed his eyes, and remained quiet for an hour or more.

"Mr. Selden thinking he had fallen asleep again, was about to leave the room and awaken the nurse, who had gone to lie down, when old Jake called him. Mr. Selden went to the bedside and told him what he wanted.

" 'I say, neighbor,' said the old man, 'you're a Christian.'

" 'I hope so,' replied Mr. Selden, astonished at such a word from old Jake's mouth.

" 'I know you are,' Jake went on: 'I've heerd preachin' enough every day, and it didn't do me no good, neither; it's mighty easy to say what's right to do, but why the —— you came over here to take care of an old cuss like me, that hasn't done any thing but torment you for years, is more than I can make out, unless it's because you're a Christian.'

" 'Why, I couldn't see you ill, and let you suffer, you know,' Mr. Selden.

" 'No, I don't know no such thing,' persisted old Jake. 'I would ha' treated you mighty different, I swear.'

" 'Never mind that, neighbor,' replied Mr. S.; 'we'll be good friends after this, I hope. Try now and be quiet, so as to get better.'

" 'I can't be quiet,' cried old Jake, actually bursting into tears. 'I've said my say. I've been thinkin' it over while you thought

I was asleep, and vow I've been wrong all the way through. If you'd only paid me back for some of the mean tricks I've done you, it wouldn't be so hard; but to have you come and take care of me, I tell you it hurts.'

"Mr. Selden tried to soothe and quiet the old man, and, finally, worn out with excitement, he dropped asleep and Mr. Selden left him, feeling deeply thankful that he had come to the gloomy old house.

"Old Jake got well more rapidly than could have been expected at his age. His good disposition toward Mr. Selden did not vanish, and his whole deportment changed. Though always penurious, by a habit too fixed to be easily broken, yet he was less miserly than before, clothed himself and kept his house decently, sometimes went to church, and even gave a cold bit now and then to a hungry beggar. Towards Mr. Selden he seemed to feel unbounded gratitude, and tried to make reparation for his previous injuries. He would offer to dig in his garden in the spring, and to weed it in the summer; once he brought a little dog to the children; and one morning Mr. Selden was astonished to see a fine Alderney cow grazing in his yard. Going out to see how she got in, he found the gates all closed and a card tied to one of the cow's horns with 'a present to Mr. Selden' written thereupon. He knew well from whom it came, and though he was too delicate to make any reference to the gift in the presence of his neighbor, he took care that old Jake should have his pail of milk every morning.

"So ended the hatred."

When Mr. John McKeon, of the New York Bar, was in Congress, he was suddenly called to order in a speech by one of the members, for being personal in his remarks. "I am not personal, Mr. Speaker," exclaimed McKeon. "I had no reference to the sensitive gentleman in what I said; but, sir, this is not the first time that an arrow shot at a venture has hit the proper mark."

Mr. Erastus Clark, residing at Hudson, in his time one of the most prominent members of the Oneida Bar, was very rapid and pungent in speech. A Dutchman meeting this gentleman at the

post-office, and thinking to have a joke with him, asked : " Mr. Clark, how would you make a Yankee out of a Dutchman ?" Clark replied instantly : " Impossible ! impossible ! can't be done ; can't be done."

• " Well, Mr. Clark, how would you make a Dutchman out of a Yankee ?" " Easy enough, sir ; easy enough, sir ; knock his brains out and break his under jaw."

Mr. Luther Marsh, the father of our estimable and promising brother Mr. Luther R. Marsh of the New York Bar, was Sheriff of Onondaga County ; and riding on horseback through a thinly-settled part of the country, he noticed a man, off some distance in a field, who, as he looked up and saw the rider, left his plough and ran for the woods. The Sheriff immediately dismounted, tied his horse to a fence and made after him. Being an agile and powerful man, he, at length, after something of a chase, overtook the fugitive. The man exclaimed, " I knew you would catch me, Sheriff." " Well," said the Sheriff, " I've no process against you now, but I thought I would let you know that if ever I should, it wouldn't do you any good to run."

A man in New York streets asked a stranger the way to the Sheriff's office : " Earn five dollars, my friend, and spend ten : you'll soon find the way to the Sheriff's office."

An old landmark, whereby boundaries could start from and be ascertained, was traced by the energy and tact of Mr. William Fullerton, now of the New York Bar. He was then young at the law, and this was in Orange County. There was great uncertainty as to the lines of several farms, on account of two adjoining and seemingly overlapping patents. There had been a line run, but there seemed to be no present trace of it. Mr. Fullerton, by industry, came across an old deed, which showed that the starting point was at a birch-tree, marked J. F. ; and he went to the town of Monroe to see whether he could come across some old inhabitant who might further help him. An old man, named Florence, who was very deaf, was pointed out as being likely to prove of service ; and on bawling into his ear, Mr. Fullerton ascertained that this person well remembered the birch-tree so marked,

for he said his father was on the ground when Mr. George Clinton made the survey. And he also stated that his father had good cause for remembering, for when the starting point and the marking of the birch-tree occurred, Mr. Clinton tore off some twigs and gave him a birching with them, and told him he did so to make him remember the boundary point. The old man said his father had often showed him where the tree had stood; and that he could point out its locality although it had rotted down many years before. Birch bark being very lasting, Mr. Fullerton thought he might discover some of its remains upon the ground; and so, under the guidance of this ancient inhabitant, he went to the spot. Clearing away, with labor, the *debris* in a deep fissure between the rocks where the tree was said to have grown and putting his energies to what he felt must be the true location, he came to remnants of birch bark; and working down still deeper many feet, he got hold of a piece of such bark about three feet long by eighteen inches wide; and lo and behold! to parody slightly from Moore, "The *bark* was still there but the birch-tree was gone." In other words, upon this big piece of the bark were clearly perceptible the "J. F.," in capital letters and in a perfect state of preservation, although the marking had taken place over one hundred years before. Running the line from this point, Mr. Fullerton established the patent-lines according to the desire of his clients, and settled the dispute forever. One of these clients was a Quaker, named Harrison Cornell; and the birch bark hangs in a frame to this day in his parlor.

First attempts by lawyers and others at public speaking do not always become successes. Thus, outside of the law, Deacon Johnson was in the habit of finding fault with his minister and declaring it was an easy thing to preach. One Sunday morning, the latter was taken suddenly ill, and Deacon Johnson was urged to hold forth. Vanity made him eagerly accept. He got into the desk, but a nervous chill came over him—there was no retreat. He rose to give out a hymn, and commenced by saying, "Our pastor is detained by sickness, let us sing *to his praise* the nineteenth psalm." The manner of the congregation increased the

Deacon's agitation; and he finished reading the psalm by saying, "Please to sing five verses, omitting the last line of each verse." At length he came to the sermon; announced the text; read it once; again; but the more he sought for something to say, the less could he find. He looked down at the people and they up at him. Matters grew desperate; at last he burst out: "Brethren, if any of you think it is an easy thing to preach, all I have to say is, just come up here and try."

We have introduced this to give the first essay at speaking in public of Mr. John A. Collier, of Binghampton, who became a leading lawyer, and showed, ultimately, forensic talent of a high order.

His *début* was in Congress. He rose and uttered: "Mr. Speaker." "The gentleman from New York," said the Speaker. It began to grow dark in front of the rising member; but he managed to exclaim again, "Mr. Speaker." "The gentleman from New York," again called out the Speaker. By this time attention was arrested; and the sudden silence was even more confounding than the uproar in which Collier had risen. Once more he cried out, and now on the verge of despair, "Mr. Speaker," "The gentleman from New York," said the Speaker, with the faintest smile of compassion on his face. But no words came to bear the thoughts of the embarrassed member, and turning to a friend sitting next to him, he burst forth: "I say, Ellsworth, do you know where I can charter a knot-hole for a fortnight?" This was Collier's maiden speech; and yet he rose to the front rank of speakers in the House.

And coincidences occur in all times and countries. The nervousness attaching to first public attempts is proof of this. Cicero, speaking in the character of Crassus, says to his auditors: "When I was young at the bar, I was so confused and faint in opening an impeachment that Quintus Maximus laid me under an infinite obligation by dismissing the court as soon as he saw me totally debilitated and half dead from fear."

Dunning, Lord Ashburton, opened his first brief before the House of Commons; but his faculties became so overpowered

through fear or diffidence and there came over him such a confusion of ideas that he conceived himself to hold in his hand, not his brief but a roll of white paper caught up by mistake; and, under this impression, was obliged to retire from the bar of the House. He, however, returned to the charge. Ultimately Dunning became a remarkable illustration of the force of genius overcoming all difficulties.

Mr. William H. Seward gave the following reminiscence of a first case to the editor of the Knickerbocker Magazine (vol. 44, p. 98):

“ My first case in Cayuga County, outside of the village, was in the town of S——; and I walked the whole distance to attend to it. 'Twas a plain case—an action for debt before a country jury. I arrived in court in due season and was ready, at once, to proceed; but the defendant did not want to go on without his counsel; who had not yet made his appearance. After waiting some time and no counsel presenting himself, I thought professional courtesy did not require any longer delay. So I arose and laid before the court and jury a plain, unvarnished statement of the case in hand and was about claiming judgment for my client, when there was a sudden bustle in the court-room and the defendant exclaimed, ‘ Hold on ! switch off ! dry up a minute ! Here comes *my* lawyer.’ I looked round and saw my antagonist walking towards the bar. I had never seen such a specimen of a lawyer. He wore an old round-crowned drab hat, with a tow-string tied around it for a band, with a short black pipe twisted in it and ‘two and sixpence’ marked in figures with red-chalk on the side. He had a short and very crooked stick over his shoulder, on which were suspended his coat and jacket and his brown tow trowsers were rolled nearly up to his knees and he was without shoes or stockings. As he came up to the table, he tossed his garments off from his stick, wiped his streaming face with a dirty red-and-yellow cotton handkerchief and then ‘opened’ upon the court. ‘Sharp practice this,’ said he, ‘to let a young Auburn lawyer come down here to mystify and confuse the minds of plain people like us and have the talk all his own way. What’s been a-goin on ? How fur has he got ?’

"I rose and remarked that I had waited more than a reasonable time and had then made a plain statement of my case to the court and jury, but that I would now recapitulate my argument, which I, at once, proceeded to do. When I had finished, he took a huge quid of pig-tail in his mouth and scarcely deigning a look at me, said to the jury:

" 'Well there—that's all he's got to say! Now *I* sha'n't say nothing. *I* know and so do *you* that common law is common sense. The young man didn't think we had 'ither of 'em. Ha! ha!—guess he'll find he's mistaken! I leave the whole then to you, gentlemen. You won't have to wait long, I expect, to come to a decision.' And the case was instantly decided against me, although as clearly in my favor as the sun at noonday."

There are characters who having something at stake are not ready with manliness to risk what Justice will do, but must attempt to fawn upon her ministers. Here is a fair story of these "ear-wigs."

Judge B——, one of the justices of the Eighth District, was trying, at the Genesee Circuit, an action in which a party happened to be a namesake. The latter approached the judge and said:

"We are of the same name, Judge. I've been making inquiries and find we are some relation to each other."

"Ah, is that so? Are you sure of it?"

"Oh, yes; no doubt of it."

"Well, I am very glad to hear that, very glad indeed. I shall get rid of trying your action. I shall pass it over, because I cannot sit where I am related to either party."

This was a little more than our gentleman had contemplated. So, after a few inquiries as to his honor's ancestry, residence, etc., he observed:

"I think, Judge, I was mistaken. We are of quite different families and not at all related."

"Ah, is that so?"

"Oh, yes, there is no mistake about it."

"Well," said the judge, in a very emphatic tone, "I am glad

to learn that, very glad. I should hate awfully to be related to a man mean enough to attempt to influence a court as you have."

The relative relatively retired.

The late Judge Mullett, of the Eighth Judicial District of New York, with many eccentricities, was a man of genius. "No one who was present," observed a professional friend to the author, "can forget the impression he made on the court and bar at the October term, 1843, of the Supreme Court at Rochester. He then argued the interesting and important case of *Ogden v. Lee* (reported in 6th *Hill*, 546), involving the question of the title of the Seneca Nation of Indians to the Cattaraugus Reservation. The opposing counsel was Mr. F. Elmore, then a lawyer of Buffalo. Mullett, with no paper before him except the mere printed case, made an argument of two hours' duration, logical in arrangement, charming in language, eloquent in delivery and interspersed with citations of many authorities, referring to them by volume and page. He was at that time quite unknown outside of his own immediate neighborhood, having seemingly gone into obscurity after leaving the Legislature, of which he had been a member many years. He was not accomplished or refined in external appearance. Under these circumstances, it may well be supposed that this argument created no little astonishment and admiration among eminent legal men from different parts of the State in attendance at that term and it was a common saying among them that they were reminded of the arguments of Talcott in his best days. Judge Nelson, then presiding as chief-justice, expressed himself in high terms of this forensic effort and lawyers who heard were not likely soon to forget it."

A very kind and benevolent gentleman, during the mercantile reverses in New York which occurred in 1837, was fain to secure the office of notary to a bank. His sensitive heart found it a sore task to call on old acquaintances and former business associates to demand payment and give them any protest of their notes. And it was his custom to call the party aside and, in a low and almost affectionate tone, to suggest that "doubtless through the carelessness of a clerk or some accidental omission a note was left unpaid." He

was, at length, cured of his fastidiousness. Calling on a large mercantile house, with a notice of protest on a big bill of exchange and their credit gone, he entered into a very pleasant and simpering conversation with its partners; and when he could gossip no longer, he beckoned one of them tenderly aside, informed him of his little errand which he had like to have forgotten and added, in a confidential, consolatory tone, "Of course, it's some mistake."

"A mistake!" exclaimed the other; "not a bit of it! It's a reg'lar built bu'st."

Mr. Azor Taber, of Albany, was a lawyer deservedly entitled to more fame than he had. In a cause involving some of the most abstruse and difficult questions, he made an argument of great ability. When the cause shortly afterwards appeared in the Reports, the Bar were much astonished at the learning and research displayed in the opinion and wondered how it could have come from the judge who appeared to have delivered it. Taber, on being asked to explain the mystery, dryly but truly remarked that "his honor, in sending the *manuscript* of the case to the reporter, instead of forwarding his own opinion had, doubtless by mistake, sent a copy of the argument of counsel." This explanation was fully credited by all who knew the parties.

Mr. Azor Taber had always a bright, sharp manner and got the name, among his intimates, of Razor Taber.

There was a time when a certain court in the City of New York was Superior in every respect. The cases before it were of great mercantile magnitude; leading members of the bar made it their *forum*; and its judges were grave and great. This was when the first officer of the State nominated and Senators in Senate confirmed judicial functionaries. At the present day, the judiciary springs, as mushrooms do, from a hot-bed, the hot-bed of politics, made up, to use a phrase, with slight variation, from Ralph in his *Use and Abuse of Parliaments*, by "those two thieves between whom the nation is crucified," Republicans and Democrats. Judges are nominated by party-liking and have to depend, as did Coriolanus, on the "most sweet voices" of the people at a general election. Not but that there is still good leaven in this court, although men of the

olden time choose to think it does not raise such a loaf as it did. We, however, have only to retail an anecdote. A lawyer was lately asked by an elected judge of the court we have referred to, how he liked his court?

"I can best illustrate my opinion," responded our brother, "by telling a story: In the county in which I was brought up, there lived an old man who had never been known to be sober. His face was exceedingly red and his nose double the normal size. Meeting him one day after an absence of some weeks, I was surprised to discover that his manner was more feeble and his face several shades paler than usual; and I asked him for an explanation. He gave it to me, as follows:

" ' You see, I have been trying to taper-off. About a month ago, I bought a barrel of whiskey; and after putting a faucet into one end, I placed it carefully in the cellar. When I took a drink, I always drew a gill from the faucet, and put the same quantity of water in the bung-hole. I did not notice the effect so much at first, but, bless you, my boy, the grog is beginning to get terribly weak !' "

Our lawyer having ended his story, had the impudence to wind up with an unfeed opinion: that the court had tapered off more rapidly than his old neighbor.

The peculiar sinister vision of Mr. Muloch of the New York Bar, seemed to add to the twinkles of wit which he would give out. N., a dough-headed brother, was going into judge's chambers and Muloch asked after his health.

" Oh," said N., " I feel very ill; such a headache; my head is like an oven."

Muloch aside, to another lawyer: " N's head may be like an oven, but he'll never make his bread out of it!"

Some years ago, attorneys were not familiar with the practice of the United States Courts and used to be much in the habit of resorting to the clerks' offices for information. On one occasion, Mr. Muloch went to the United States District Clerk's office in New York and was making some inquiry of that functionary, when a fat attaché, munching chestnuts and who was lying upon a settee,

rolled half over and commenced giving information. Muloch turned upon him, opened his peculiar eye and exclaimed, "What do you know about it—it isn't any thing to eat."

Colonel Depeyster underwent a harsh cross-examination in a New York court by a lawyer whose birth-place was Ireland. As he was stepping, irritated, from the witness-stand, a member of the Bar held out his snuff-box with an offer of a pinch of Lundyfoot. "No, sir, I thank you. I've had Irish blackguard enough this morning."

Judges can do kindly acts to young lawyers without any injustice. The late James McKown of Albany, well known as Recorder there, presided at the Mayor's Court. It had but limited jurisdiction. When a friend of the author's first started as a lawyer, he was trying a case before Judge McKown for property which a client claimed under a chattel-mortgage. Our friend proved the mortgage and rested. The mature adversary moved for a nonsuit, on the ground of there being no evidence of consideration; but it was insisted that the seal on the instrument imported consideration. The kindly judge, it is believed, saw the unprepared state of our young friend. His honor looked at his watch and observed it was about time to adjourn for dinner; adjournment accordingly. This gave time to get witnesses as to the consideration, and the end was a verdict in favor of the plaintiff. The bread in this case thus scattered came back. When the judge, Recorder McKown got into years and with years into pecuniary trouble, our friend, who had been thus fairly and considerately served, was able, in some foreclosure matters which directly touched the ex-Recorder's very homestead, to be lenient and kindly forbearing.

R——, afterwards a judge, was a student in a certain village in days gone by when close-fitting clothes were the fashion. Our student's legs afforded little visible means of support and narrowed remarkably whenever he was dressed in tight knee-breeches, silk stockings and broad shoe-buckles. Airing himself, thus attired, Sam Jones came into the village, driving a famine-struck pair of horses, and drawing up suddenly, exclaimed to our student:

"I say, stranger!"

"Well, sir, what?"

"Oh, ah, nothing perticular, but only be a leetle kecrful of them legs, as they mought scare my horses."

On the organization of Otsego County (1791) Mr. William Cooper was made first judge. Soon afterwards a wrestling-match was got up in front of Griffin's tavern, known as the "Bold Dragoon of the Pioneers," at Cooperstown. A ring was formed and parties matched. Judge Cooper remarked he was a wrestler and added his belief that he could throw any man in the county; and further, he wanted to find a man on his patent who could throw him; adding, he would give any one in the company a hundred acres who would, at arms-length, do so. Timothy Morse, a strong man, stepped up and laying his hands on the judge's shoulder, said: "Cooper, I beliege I can lay you on your back."

Cooper replied, "If you can, I will give you one hundred acres."

At it they went and Morse soon brought his antagonist to the position indicated. The judge got up and ordered Richard Smith, his clerk, to make out the necessary papers for one hundred acres of land.

Jones and Atwood were farmers at D——, in Western New York. Their farms adjoined, but, as is often the case, a quarrel arose about a side-hill line-fence. It resulted in a lawsuit, wherein, owing to the "tremendous stories," as Atwood chose to declare, which Jones told, a verdict was given for the latter.

A short time afterwards there was notice of a preaching in the school-house. The preacher took for his text, "What shall a man give in exchange for his soul?" And having finished, invited any one who was present and who might wish to make a few remarks on the text, to do so.

Jones arose and began: "What, brothers, shall a man give for his soul? How much is it worth? Can any brother here tell me how much a soul is worth?"

Neighbor Atwood jumped up, and with finger pointing to brother Jones, exclaimed: "I know what one man's soul is worth. It's worth just one rod of side-hill line-fence!"

A man named George F. Norton was indicted before the Court of General Sessions in New York, 1818, for sending a challenge. We give his letters *verbatim et literatim*. The court told the jury they would perceive that, although the defendant had assumed the character and etiquette of a gentleman, there was scarcely a word in his letters spelled right. Even the monosyllable *me* he had spelt *mee*.

"MUNDAY EVENING, May 19.

"SIR—I Expect You will give mee the satisfaction of a gentlemen For the insult you have put upon Mee, if you are any part of a Gentleman you will find mee Over at Brooklin at 9 'o clock Tomorrow morning when wee can settle all Disputes Both to your and my satisfaction if you are a Mann of corague You know what I Mean tell then I Remain
"GEO. F. NORTON."

"NEW YORK, May 19, 1818.

"SIR—I thought You well enough acquainted with the reul of Society to know when you receive a note of the description of My Last that you had the chiose And appointment of place And Instruments) Enough of this parleing in the Course of the day I Expect Your Deciceve answeerr pleas Appoint your time and Place and Bring your friend F.
"I am
"GEO. F. NORTON."

Some years ago, justices of the peace, although not lacking in shrewd common sense, were generally uneducated men. A publishing firm at Auburn announced "The New York Justice" in the press. A "squire" in a town of Oneida County wrote the following to the publishers:

"Mr. D—— and M——. I seed in a little Book the other day an acount of a book Cald the nu yorke gustise which yu sa is in the *pres* I wuld like to no when yu will git thru presen on it I want one of them books most orfully I were elected Squire last Spring to our town Meten to take efect the first of january my frends told me that the County Clerk wuld qualifi me I called on him the first of jan to be qualifide and he said he culd

not du that thing he culd sware me in and I must du the other
my selfe here I am green as Cattle never sude any body—never
was sude: witness never but once on a guri twiste and at that time
never thout of bein Squire please write me when you will have that
book presed I will give you your prise if you wont take any les.

“Yours, &c.,

“D. D. S——, Square.”

In one of the interior cities of the State of New York, there was a lawyer who had been a judge of a local court. He was not over-gifted and was certainly wanting in the organ of “causality.” Phrenologists came to the city of his refuge and began to “feel of folks’ heads and give a receipt of what was inside of them.” The judge went to these brain-mappers. A friend met him coming out with a blue paper in his hand.

“So, Judge, you have been to have your head examined, have you? What do you think of it?”

“Oh!” said the judge, “it is wonderful! Look here. There’s *casualty* marked very low. That’s very right; I never had an accident in my life.”

In the State of New York, some thirty years ago, a justice of the peace was authorized to solemnize a marriage. A couple went to the study of a judge of the Supreme Court and stated their desire to be married.

“Very well,” said his honor, “pass me your certificate and you may go.”

The man handed a certificate that the banns were published; but remained. The judge continued his employment until the impatient bridegroom again announced the intention of his visit.

“Very well,” said the judge; and again pursued his task. After some further delay, the neglected applicants once more reminded his honor of their desire to be married.

“Why, go home,” exclaimed he: “you have been married this half hour.”

It seems the law only required a declaration of intention of marriage before an official and a recognition of it by him.

And there was a justice in one of the central counties of New

York who had got comfortably to bed on a dreary winter's night, when there came a thundering rap at the kitchen-door. He slept in a recess only divided from the kitchen by a curtain; and fancying some of his married children were ill, he hastily got out of bed, put his trowsers half on; and opening the door a trifle, he exclaimed, in a nervous tone, "What do you want?"

"We want to be married."

"Go home and go to bed, you are married enough."

His honor then dashed to the door; dropped trowsers and bounded into bed.

Some twelve years ago, a thread-bare limb of the law of New York thus wrote to a professional brother:

"DEAR SIR—A *post-mortem* examination of past calamities is by no means agreeable; yet I must disinter one and bring it to your notice. You will recollect that for some diluvian concern, old Blue Jay, *alias* M——n, obtained a judgment against me. He sold it to N. F. H——s, and H——s assigned to you; and we agreed it should be satisfied, on my conveying to you a lot near S——'s. I made the conveyance, but there was some informality in the acknowledgment of an earlier conveyance; and what became of the deed or the lot I have no knowledge. I am now anxious to have the judgment discharged of record. It is a lien on nothing under heaven and never will be; for, in truth, I am so poor I do not make a shadow when the sun shines, and my bones stick into the chair I sit in like a fork. Yet the judgment is a scarecrow in my way, and I want it satisfied while we are here in the flesh. Old debts are worse than original sins; for they remain in full force after the most sincere repentance. In remitting this one, have no fear that you will strain the quality of mercy.

"E. M."

An attorney in New York addressed a letter to a man against whom he had "a small demand." Not receiving any answer, he again wrote, but with no better success. After having sent him a number of letters, he, at last, got one in return, wherein the debtor said he would "try and dew somethin' when sleddin' came,"

and closed with, "but for God's sake, lawyer, don't write any more letters, for it will take all the debt to pay the postages."

Judge Philo G——, of the Supreme Court, who, from the rapidity with which he dispatched business, obtained the *sobriquet* of steam-judge, was descending the long flight of stairs which led to his office in the city of N——, one day in December; and, slipping near the top, he, with the rapidity of a "steam-judge," came down the inclined plane, recording his passage in a distinct bump upon every stair until he reached bottom; and even then he had acquired such a degree of momentum that he rolled pretty nearly across the sidewalk. A neighboring merchant, seeing the predicament of the judge, immediately ran to his assistance and, raising him, said:

"I hope your honor is not hurt!"

"No," said the judge sternly; "my honor is not hurt, but something else may be."

In connection with the above:

Sergeant Prime, who held high rank in the time of George III., had a remarkably long nose; and being one day out riding, was flung from his horse and fell upon his face in the middle of the road. A countryman, who saw the occurrence, ran hastily up, raised the sergeant from the dirt and asked him whether he was much hurt? The sergeant replied in the negative.

"I zee, zur," said the rustic, grinning, "your ploughshare saved ye!"

Most men, perhaps all persons are marked with some peculiarity. The gentleman we have now to refer to never accosted us but we were ready to exclaim from Milton:

"He called so loud that all the hollow deep of hell resounded."

He is an extra-sized, well-proportioned gentleman, very frank, remarkably good-natured—while that voice of his might, without any extra effort, fill the largest opera-house. We can, indeed, say of him as Mr. Jarndyce did of his friend Lawrence Boynthorn, "And his lungs! there's no simile for his lungs. Talking, laughing, snoring, they make the beams of the house shake."

He was in Albany and had been arguing an important case before the Chancellor. The next day, in State Street he met General Root.

"Ah! my dear General Root, how do you do—how do you do?"

The general in the same high tone: "Ah! great A, little a, how are you?"

Crosswell being present, said he regretted he had not heard our friend's speech before the Chancellor the day before.

"What! you did not *hear* it?" exclaimed Root. "Then you certainly were not in any part of Albany."

Many remember the old story of the raccoon coming incontinently down the tree on seeing that Captain Crockett was ready with his rifle underneath. The following goes in the same direction and is quite as remarkable from having facts connected with it.

"A few days ago," says the New York Times newspaper, "an unknown man called at the Franklin Street Police Station, and inquired for Captain Jourdan. As that official was out, the messenger left a letter and parcel for the captain. The letter, on being opened by the receiver, read as follows:

"NEW YORK, April 17, 1867.

"TO CAPTAIN JOURDAN, ESQ.:

"Having been a burglar for the last fifteen years, and always successful with the exception of once, and that being when I fell into your hands, and you being untiring in prosecuting me, I was convicted and sentenced to the State Prison. After serving my time out I thought you would have forgotten me and there would be nobody to interfere with me. I started again at my old calling and the first burglary that I intended to commit was frustrated again by you. I tried again and again and was always met by yourself or your shadow haunting me wherever I went or done. Now I am disgusted with you and thieving in general and, therefore, I send you, through the bearer, all my tools, being a selection that many a modern cracksman would be proud to possess. You will find tools there that will open a money-drawer, a chest, a trunk: tools that will open or burst an iron door, tools that will

raise a scuttle or go through a brick wall, and again, tools that will burst any safe in the country. You will find there a good many keys that will open any common lock, and, again, keys for the most difficult locks. I make you a present of all, and think you are the only man worthy to receive them, because, aside of all, I can only praise your ingenuity in ferreting out a case. I never saw or heard of your equal, I can assure you. For my part, I will try to earn an honest living and keep out of your way. Most respectfully yours,

“AN OLD OFFENDER.”

“On examining the package accompanying this letter, the Captain found it to contain a full set of burglar's tools, all made in the best manner. The following is a list of the articles: 44 safe and store door keys, 12 picklocks, 23 drills, 3 punches, 1 bullet-mould, 10 files, 1 screw-driver, 4 cold-chisels, 6 steel hooks for wrenching open safes, 1 fine saw for iron, 1 brace-and-bit, 6 pieces of wax for taking impressions of locks and keys, 1 steel ‘jimmy,’ 1 screw-wrench and a package of gunpowder. Captain Jourdan has added them to his cabinet of such curiosities.”

An Irishman was brought to a police-court in New York. On being questioned, he was ordered to be released. Pat gracefully retired back a few paces; flung his hat (did anybody ever see an Irishman in ordinary life with any thing but a “shocking bad hat?”) upon the floor; dropped suddenly on his knees; clenched his hands together and thus poured out his gratitude:

“May the saints in Heaven protect you, your riv’rince, and may every hair on your head turn to a wax-candle to light ye to glory.”

The dislike to certain trades and callings can hardly be accounted for, yet so it is. Thus, a lad is not likely to desire the tailor's trade. We have heard of a case where a boy was put to an offensive calling and ordered, in connection with it, to jump in and go to work; but he hesitated, held back, almost refused. Whereupon he was told that if he did not do as he was directed he should be apprenticed to a tailor. No longer did he hesitate, but, with all the spirit of Cassius, “plunged in” and was ready to bid Cæsar follow him. This by way of prologue. There does not seem to

be any thing objectionable in the calling of a policeman, although it is not one which man's nature would make him seek after; and yet, in a sense, we are all policemen. Lately, being at the end of a New York railroad car, we struck up a conversation with a cheerful gossip, who told us the following, he being present at the time of the occurrence:

A respectable-looking woman was taken before one of our police courts on some slight charge. The magistrate was not inclined to commit her. As she sat aside, a police-officer, thinking he knew her and feeling disposed to sympathize and serve her, went to the woman and asked:

"Madam, have you not a brother a police-officer?"

"No, indeed!" said she, bridling up; "I have two brothers and they are both respectable."

Mr. Henry B. C——, of the New York Bar, was applied to by an individual to draw an assignment, the palpable object of which was to reserve to the debtor the use of his property. Despite the cautious way in which the proposed scheme of fraud was developed, C—— at once saw through it. After conversing for awhile with his client, he said:

"I perceive what you want; you desire a *bona fide* fraudulent assignment."

"You have hit it exactly," responded the client.

"Well," added Mr. C——, "I am not much used to that sort of thing and I consider you had better go somewhere else."

"To whom would you recommend me?"

C—— then ran over the names of several attorneys of more than doubtful reputation.

"Why, Mr. C——! all these are men of no character; you surely would not send me to one of them?"

"Certainly I should; for they are the only men to advise such a client as you are."

One of such a stamp as was here recommended might quote from Moore, with a slight variation:

"I heed not, I know not, if guilt's in that heart;
I know that thou *feed* me whatever thou art."

Henry M. Western, of New York, was apt at repartee; and Colonel Nye Hall was a quicksilver lawyer, as restless and chattering as an intelligent animal, and as nimble as a kitten or parched pea. Western was at the village of Sing Sing, where he had been in a cause connected with the notorious Matthias "the prophet." He had left the court-house, and, excited by his efforts, was talking loudly to a knot of countrymen.

"Ah, there you are!" exclaimed Hall, pushing himself in and close to Western; "there you are, always making your barrel-organ go like a mountebank."

"Yes," retorted Western, "I am like a mountebank, for I not only use my barrel-organ, but, my friends,"—pointing to Hall—"I also always travel about with my monkey."

A man went to Mr. Francis B. Cutting, so long a leading member of the New York Bar, to commence an action. On stating his case the latter was of opinion he could not recover. This did not satisfy and he notified Mr. Cutting he should go to Mr. Gerard and retain him to bring the suit.

"Well," observed Mr. C——, "go if you like; but understand: the person you propose to sue happens also to be a client of mine and you must not be vexed or surprised if I am retained against Gerard."

The action was brought. Mr. Cutting succeeded for the defendant; and meeting the positive plaintiff in the street, said:

"You remember, I said you would not succeed?"

The man, instead of showing disappointment, was buoyant, positively lively, and observed, with cheerful simplicity:

"Oh, yes, I know I lost the cause, but I did not care about that at all, for Mr. Gerard says we sustained a principle."

Mr. Gerard was retained by a furrier in an action against an insurance company for loss on his stock by fire. The plaintiff's store had several times before been on fire and companies had suffered. The defendants in the present case insisted that there had not been an honest loss; in proof, the fire had gone on for a considerable time and yet there was no smell, which must have been apparent, and strongly too, if furs had come in contact with

fire. Mr. Gerard, in addressing the jury, dwelt on this portion of the defence as to there being no perceptible smell and rang changes on it.

“Gentlemen of the jury, see to what the other side are reduced: the company will not pay because they have not been able to smell out the loss. Now, imagine your house insured and you go to rest, trusting in Providence and the insurance company. A fire takes place; you make your claim and the company, forsooth, resist. Why? Why, gentlemen, simply because you have not made a smell!”

Our brother Mr. Albert Matthews, who uses a facile pen, has pleasantly dressed up in a periodical an incident which occurred in the Superior Court of New York. Devoid of romance, the matter was this: Late on a Friday afternoon a case was called on for trial and the judge ordered the clerk to empanel a jury. The courtroom was almost deserted. The clerk called the names of the jurors who had not already been discharged. Only one answered and he took his place in the jury-box. It was, as to any others, like calling spirits from the vasty deep. So, the clerk looked expressively at the one juror and sole judge and sat down; while his honor, with the best gravity he could assume, asked the respective counsel engaged in the case, whether they would go to trial, under the provisions of the present constitution and code of practice with this one juryman? They consented. Witnesses were produced; the advocates summed up before this “gentleman of the jury” and so did his honor the judge. The clerk asked, whether the jury *was* ready with a verdict? when he was met with, “the jury desired to retire to the jury-room for the purpose of deliberation.” So, the officer in charge retired with the jury. So long a time passed that the court ordered an adjournment and a sealed verdict. The jury “*imperbant omnes solus*,” called for pens, ink and paper. Next morning, the judge opened court and the verdict, which read: “The jury cannot agree.”

Old lawyer Martin in Alleghany County had the coolest way of transferring money from the pockets of his clients to his own.

Ben Brooks, a rich, close-fisted farmer in the neighborhood, was one of his clients and, in their conferences, there was always a pretty sharp contest as to who should outwit the other. They had been sitting for an hour or two, trying their wits, to get the advantage of each other; when Brooks got excited and, suddenly turning to Mr. Martin, said:

“Martin, I had a remarkable dream last night.”

“Ah, had you? what was it?”

“It was a terrible one, an awful one. I haven’t fairly got over the effects of it yet. I can’t keep it out of my mind for a minute.”

“Well, tell it.”

“I dreamed,” said Brooks, “that I was in hell; and the devil sat in his big chair, pointing out their places to his new subjects as they entered one after another. I was surprised to see so many of my old neighbors come in. At length, the door opened; and, looking round, I saw you enter. The devil told me to take this seat and another that; but when he saw you come in, he, politely, rose up and pointing to his own chair, said: ‘Here, Lawyer Martin, you can fill it a great deal better than I can.’”

This coupling the devil with our profession has, no doubt, been helped by the idea that the gentleman in black is the lawyers’ patron saint; and which idea is made out of a legend. As it is interesting and not often met with, we make free to insert the relation:

Evona, an aged Catholic lawyer of Brittany, was shocked to find that while professions and trades, from the highest to the most degrading—thus embracing thieves and abandoned personages—had a saint, the lawyers were without one. So, Evona went to Rome to entreat the Pope to give the lawyers a tutelary or patron saint. The Pope replied that he knew of none who were not already disposed of to some other profession. His Holiness, however, proposed that he should go round the Church of Giovanni di Leterano blindfolded; and, after saying a number of Ave Marias, the first saint he laid hold of should be the patron of the lawyers.

This the good old lawyer undertook; and, at the end of his Ave Marias, stopped at the altar of St. Michael, where he laid hold of—not the saint, but—unfortunately the devil under Michael's feet, crying out: "This is our saint, let him be our patron."

Pleasantries are ended.

We leave our brethren to their patron saint.

